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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *et al., ex rel*. JEFFREY MAZIK, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, *et al.*, Defendants	Case No. No.: 2:19-cv-00559-DAD-JDP **REPLY IN SUPPORT OF MOTION FOR A TEMPORARY STAY, MODIFICATION OF SCHEDULE AND ORDER OF REFERENCE** **Date: May 18, 2026** **Time: 1:30 PM** **Courtroom 4, 15th Floor** **Hon. Dale A. Drozd**

INTRODUCTION

Defendants oppose relator's motion for Rule 16 relief, which is modified pursuant to a separate motion for a stay, set to be heard on June 1, 2026. Here, in order to defeat relator's request for a stay in discovery and a modification of the case schedule, defendants misstate the bases for the motion, as well as applicable law.

First, defendants argue that the stay request is moot, given the fact that relator Mazik has already sat for his deposition and provided discovery responses. This is a truncated view of the motion. Mazik did not seek to stay his deposition, he asked that the Court stay discovery until the key questions of waiver, claim preclusion and damage offset arising out of the *Osinek* settlement were resolved. That basis did not extinguish when Mazik sat for his deposition. In fact, the need for a stay grows more firm, now that those very questions are before the Ninth Circuit on Mazik's appeal. The Court might consider consolidating this motion with the one set for June 1, and stay the entire case.

Second, defendants argue that relief from the current case schedule is not available to Mazik in this action. In so doing, however, defendants try to make this a case where a party seeks to modify a deadline *after* that deadline has expired, requiring a showing of both good cause and excusable neglect. In fact, Mazik sought relief through an administrative motion, and after that motion was denied without prejudice, he filed this motion *before* any deadline had passed. On its merits, good cause exists to modify the schedule and extend time for Mazik's new counsel to review the massive amounts of records and data obtained through prior counsel, issue specific discovery requests on important issues – many of which only recently came in focus after defendants' late production and the effect of the *Osinek* settlement – and accommodate the reasonable needs of the parties in this complex non-intervened *qui tam* case.

When combined with the modified request, the Court should grant a stay in the entire case, and require the submission of a joint statement on a new schedule once the mandate returns from the Ninth Circuit. In the meantime, relator continues to believe that an order of reference for settlement purposes would serve everyone's interests.

REPLY ARGUMENTS

I. The stay request is very much alive, made even more pressing by Mazik's appeal of Judge Chen's ruling in *Osinek* to the Ninth Circuit

In their opposition, defendants contend that Mazik's request for a stay in discovery is now "moot." According to defendants, the only reason Mazik sought a temporary stay in discovery was to avoid sitting for deposition and responding to written discovery requests that Kaiser served in late February and early March, 2026. Now that relator had his deposition taken and he served discovery responses, defendants argue there is no longer a need for any stay. *See* Defs.' Opp., at 3.

This is a misstatement of Mazik's motion. True, relator requested that defendants stipulate to the a reasonable extension of time for Mazik to respond to Kaiser's rushed discovery requests. *See* Exh. G (ECF 137-2). Given the circumstances of this case – the extensive briefing and argument before Judge Chen on Mazik's motion for a share of the *Osinek* settlement proceeds, and the need for more time for Mazik's counsel to review the massive amount of files and data transferred to the Mendenhall firm in February (Mendenhall Decl. (ECF 137-1), ¶¶2-4) – reasonable opposing counsel would have agreed. A reasonable extension was even more justified, given Mr. Mendenhall's current health crisis, which has caused recent multiple hospitalizations, and an absolute mandate by his medical providers to build in time for flexibility around his work obligations. *See* Supplemental Friedman Decl., at ¶2.

When Kaiser refused to grant time beyond March 15, 2026, and counsel threatened to unnecessarily incur expenses simply to put pressure on Mazik and his counsel under these difficult circumstances, Mazik responded to the discovery demands. Following the Court's denial of Mazik's Administrative Motion for a stay without prejudice to renewal (ECF 136), Mazik filed this noticed motion for relief under Rule 16. He did so *before* the expiration of any cut-off dates. As evidenced by the correspondence (at Exh. G and Defs.' Exh. A-C), Mazik responded to the discovery after fully asserting objections based upon the pending motion for a stay. Mazik's stay request was thus not rendered "moot."

Mazik and his counsel argued they needed time to review the 14.6 GB of data in 13,857 files before propounding his own final discovery requests – something the stay in discovery would allow. Moreover, the appropriate scope of fact and expert discovery for either party was likely to be impacted by Mazik's motion for a share of the *Osinek* settlement. Rule 26 expressly requires that discovery be balanced with the needs of the case, and the scope of Mazik's claim following the *Osinek* settlement thus impacts Mazik's objections to Kaiser's discovery, as it does to the completion of Mazik's fact and expert discovery. Now that Judge Chen has ruled on issues impacting the viability of Mazik's claims – and that ruling is already on appeal in the Ninth Circuit – the need for a stay is even more solidified.[1]

II. Defendants fail to refute the showing of good cause under Rule 16

Defendants attempt to defeat Mazik's Rule 16 request for modification of the scheduling order by characterizing it as a late motion to "reopen" discovery, and by asserting it is predicated on a yet to be filed late request to file an amended complaint. Like it did with the stay request, this is a misstatement of both the purposes of, and bases for, the continuance requested in the motion.

A. This motion was not filed after the expiration of any deadline

Contrary to defendants' false characterization, this motion was not filed after expiration of any scheduling order deadline, including the March 15, 2026 date for close of discovery. After denial of the administrative motion without prejudice, and within days after the April 2, 2026, hearing before Judge Chen, Mazik moved for relief from the scheduling order under Rule 16. When seeking such relief *before* the expiration of the deadline, Mazik needs to show "good cause" under Rule 16, and not "excusable neglect" under Rule 6. *See Mounts v. 3M Co.*, 2024 U.S. Dist. LEXIS 174443, at *20-22 (E.D. Ky.

[1]Mazik has therefore modified the stay request, to include the entirety of the case, until the Ninth Circuit determines the appeal. *See* ECF No. 139. That motion is currently set for hearing on June 1, 2026. In the event that the Court wishes to hear the two motions together, Mazik suggests that the Court continue the hearing on this motion to June 1.

Sep. 26, 2024) (finding both "good cause" and "excusable neglect" when a "seemingly unanticipated change in counsel" created inherent difficulties meeting certain deadlines). Defendants reliance on cases seeking permission to "reopen" discovery is thus misplaced.

B. This motion is not premature

Kaiser next argues the motion is premature, asserting that it is based on Mazik's intent to file an amended complaint after the date set in the scheduling order for amendment. *See* Defs.' Opp., at 5-6. This too is a mis-characterization. Mazik's motion for Rule 16 relief is predicated squarely on good cause untethered from the desire to amend. *See* Motion, at 16:9-17:18 (showing diligence of Mazik's discovery efforts under the lead of prior counsel, addressing the substitution of counsel and the health of Attorney Mendenhall, citing the complexities of the case in the context of shifting focus onto state *qui tam* claims and the need for time so that relator can meet with state attorneys). Mazik also raised the need to amend the complaint in light of the changed scope caused by the *Osinek* settlement (*id*., at 17:19-20), but he did so *expressly* by explaining that Rule 16 relief did not depend on the granting of a motion to amend (*id*., at 17:20-22). In fact, the need to amend and the need for a scheduling modification *both* spring from the changed scope and focus of the Mazik's claims following the *Osinek* settlement.

Now that Judge Chen has ruled on Mazik's motion, and relator has appealed that order, a new schedule should await the Ninth Circuit's resolution. Mazik's appeal will necessarily present the issues of waiver, preclusion and damage offset in this case. As set forth in Mazik's modification to this motion, the entirety of the case should be stayed, and a new schedule should be set after the appeal.[2]

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[2]Although Kaiser's other counsel refused to aid Judge Chen's decision-making when it withheld its position on waiver, claim preclusion and damage credit, *see* April 2, 2026 RT (Exhibit C, ECF 140, at 46:21-47:1) (asserting that Mazik had voluntarily "extinguished" his claims), Kaiser's attorneys now readily admit here that dismissal of Mazik's federal *qui tam* claim is "warranted." *See* Defs.' Opp., at 6:22. Kaiser's attempt to play Mazik on both ends is reprehensible. Kaiser would deny Mazik's entitlement to a share of *Osinek* settlement while claiming it has no standing to oppose it, at the same time it seeks to benefit from the settlement through dismissal of Mazik's *qui tam* claims.

C. Defendants fail to show a lack of diligence by relator's counsel

Defendants assert that Mazik cannot show diligence in the conduct of discovery, but they make no persuasive attempt to address the extensive record set forth in the moving papers. *See* Mendenhall Decl. (ECF 137-1, ¶¶5 and 6). They completely overlook the facts that this case has, since its inception, been tied to, and trailed, the proceedings in *Osinek*; the scheduling order did not issue until August of 2024; and they withheld key records on relator's state False Claims Act claims until October of 2025. At that time, the *Osinek* parties were locked in confidential settlement negotiations, Kaiser had reached out to Mazik for ongoing settlement discussions (which could not come to fruition until the *Osinek* settlement was revealed), and Mazik was undergoing a change in representation. Without refutation, this record demonstrates that the Pollock firm engaged in extensive, timely discovery, but that the special circumstances requires an adjustment to the scheduling order to permit Mazik time to complete discovery in this complex – and now dramatically changed – False Claims Act case.

Relatedly, defendants assert that Mazik failed to identify "concrete" discovery that he hopes to complete in the extended time requested. Defs.' Opp., at 7:5-11. This too overlooks the extensive record on Mazik's motion. As explained there (and on the earlier administrative motion), once the federal claims were resolved by the *Osinek* settlement, focus necessarily shifted onto the state law claims, with related but different facts and new areas needing discovery. For example, once the schedule is modified (and after any stay is lifted), Mazik's counsel intend to seek key discovery on the remaining claims:

- Kaiser's cost submissions to DHCS auditors;
- Kaiser's records associated with the 2017 FY actuarial variance;
- Kaiser's encounter data submissions;
- Kaiser's communications and records regarding state fines.

See Supplemental Friedman declaration, at ¶3.

Indeed, Kaiser did not produce key records underlying Mazik's state law claims until October of 2025. *Id.*, at ¶4 (identifying the production of the ARIS database

spreadsheet). Mazik recognized the need to seek additional discovery associated with this late-produced evidence, but it made no sense to do so while simultaneously substituting counsel and briefing the share motion. *Id*.

In addition, depending on how the Ninth Circuit determines the impact of the *Osinek* settlement on Mazik's federal *qui tam* claims, Mazik may require discovery of the information exchanged between the government and defendants in *Osinek* concerning Kaiser's submissions for capitated payments, its risk adjustment audits and evidence of inflated diagnosis codes. *Id*., at ¶5. While Mazik at one point had hoped that such information would be obtained through "cooperation and coordination" with government attorneys, it would not have been practical (or permitted) for Mazik to demand disclosure of the government's discovery while those parties were close to settlement. Indeed, given the position of both Mazik and Kaiser that the *Osinek* settlement precludes Mazik from further recovery (undiminished by what was already paid), any effort to obtain such discovery prior to the resolution in *Osinek* would have been unreasonable. *Id*.[3]

Defendants' reference to correspondence over Mazik's state *qui tam* claims, Defs.' Exhs. D-H, similarly does not show a lack of diligence. In fact, it shows the opposite. The Pollock firm timely responded to each letter sent by Kaiser's former attorneys, pointing out the viability of his state law claims under the facts alleged. Pollock had already served interrogatories seeking discovery of these claims. Regardless, the HCC/CDPS distinction and DHCS encounter-data issues became a focus once the *Osinek* settlement resolved the federal theory. *Id*., at 7.

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[3]After obtaining necessary documents, Mazik also intends to take several key depositions, including Marita Janiga (Executive Director of Investigations in Kaiser's National Compliance, Ethics & Integrity Office); Lauren Sutcliffe (former Senior Manager in the Special Investigations Unit) ; and Mia Okinaga (former Vice President of the National Compliance Office). All three individuals were managers of Mazik in the compliance office. Following a reasonable and logical order, relator did not expect to complete these depositions before Mazik himself was deposed, or before a full and complete record of events was obtained through document requests. *Id*., at ¶6. That relator was diligent in the conduct of discovery does not negate the need for a scheduling modification now to accommodate the needs of new counsel in this complex case.

D. Defendants misstate the law on good cause and substituted counsel

Defendants cite to *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080 (9th Cir. 2002), for the proposition that substitution of counsel does not provide good cause for Rule 16 relief, but this "holding" by the Ninth Circuit is pure hallucination. It is true that, in passing, the decision refers to the substitution of counsel by the *pro se* plaintiff. *See* 302 F.3d at 1083. This fact played no role in the contentions of the parties or the decision by the Ninth Circuit, however. Instead, that case turned on the fact that the motion seeking to modify the case schedule had not been made until "after most of the deadlines had passed." *Id.,* at 1087-1088. That is not the case here. *None* of the case deadlines had passed when Mazik filed this noticed motion.

Nor does the case law support defendants' assertions regarding Rule 16 relief based, in part, on the needs of a party who substitutes counsel. Indeed, multiple cases indicate that it is an appropriate factor to consider. *See*, *e.g.*, *Franklin v. Law Firm of Simon, Eddins & Greenstone, L.P.*, 2012 U.S. Dist. LEXIS 82629, at *5-6 (N.D. Tex. June 14, 2012) (health of prior counsel and the need to substitute provided part of the court's reasoning in finding good cause to extend the discovery cut-off deadline, even after that deadline had expired); *Jacobs v. Cumberland Cty.*, 2017 U.S. Dist. LEXIS 238539, at *13 (D.N.J. Apr. 27, 2017) (substitution of counsel by defendant contributed to finding of good cause to amend answer, even though the deadline for amendment had passed); *Whatman, Inc. v. Davin*, 2010 U.S. Dist. LEXIS 29617, at *5-8 (D.S.C. Mar. 29, 2010) (same); *Mounts*, *supra* (substitution of counsel provided good cause and excusable neglect for modification of deadline to allow late filing of motion); *Oxy-Health v. H2 Enter.*, 2021 U.S. Dist. LEXIS 252539, at *6-7 (C.D. Cal. Nov. 15, 2021) (substitution of counsel by plaintiff contributed to finding of good cause to modify scheduling order).[4]

[4]This case is unlike the situation where a party relies upon the substitution of counsel to correct a strategic blunder of prior counsel to justify a late amendment after the deadline had expired. *Cf. Nat'l Prods., Inc. v. Scanstrut*, *Inc*., 2021 U.S. Dist. LEXIS 59316, at *11-12 (D. Conn. Mar. 29, 2021) (finding it a close call, but still allowing the defendant to amend the answer after expiration of the deadline).

Defendants fare no better addressing the serious health needs of Attorney Mendenhall. One sentence of mindful condolence is offered. Defs.' Opp., at 10:25-26. Such a response is no rebuttal at all. As explained in the moving papers, supplemented here with a more recent update, the attorney did not receive his diagnosis until after he committed to this case. While his office has assigned a top priority, including productive work on the motions here and in *Osinek*, Attorney Mendenhall has been required to exercise flexibility in his availability to engage in work activity. More recently, after several hospitalizations, he has been completely unavailable. His firm and co-counsel have full expectations that, with time, he will be able to perform substantially more work than he has been able to accomplish since January of this year, but a stay of the case and a resetting of discovery cut-off after the Ninth Circuit appeal would afford him the best chance of returning and contributing to this important case.[5] Friedman Decl., ¶2.

III. An order of reference would be of assistance, with or without the stay

Defendants devote an entire section responding to the request for an order of reference, Defs.' Opp., at 11:4-23, but they offer no reason to deny the referral. Defendants assert that a referral is not necessary, outside the "ordinary course of party-driven settlement discussions." *Id*. Defendants also suggest that the parties "are fully capable of conducting settlement discussions without the Court's intervention." *Id*. They overlook the record showing that, in the particular circumstances of this case, the parties attempted to discuss settlement but were unable to do so while the *Osinek* settlement remained undisclosed. Once that settlement became public, and Mazik attempted to discuss settlement, the discussions were lost in the battle to deny Mazik a share while simultaneously pressing on deadlines that require modification.

Under these circumstances, an order of reference – even while the case is stayed – offers the best opportunity for the parties to reach a settlement on Mazik's remaining claims. It is difficult to see the parties reaching an agreement until after this motion is

[5]The stay and schedule modification would allow Mazik time to find additional counsel, if needed.

resolved; but once that is done, the parties are more likely to reach a settlement under the auspices of a magistrate judge, than they would on their current trajectory.

CONCLUSION

For the foregoing reasons, those set forth in the moving papers, and those in the separately briefed modification, relator respectfully requests that the Court grant Rule 16 relief, modify the existing case schedule, issue a stay and enter an order of reference. To conserve the Court's time, relator suggests that the Court might continue the hearing on this motion until June 1, so that the modification can be taken up with this mostion.

Respectfully submitted,

Dated: May 4, 2026

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By: /s/Jeremy L. Friedman
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *et al., ex rel*. JEFFREY MAZIK, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, *et al.*, Defendants	Case No. No.: 2:19-cv-00559-DAD-JDP **SUPPLEMENTAL DECLARATION OF JEREMY L. FRIEDMAN IN SUPPORT OF MOTION FOR A TEMPORARY STAY, MODIFICATION OF SCHEDULE AND ORDER OF REFERENCE** **Date: May 18, 2026** **Time: 1:30 PM** **Courtroom 4, 15th Floor** **Hon. Dale A. Drozd**

DECLARATION OF COUNSEL

I, Jeremy L. Friedman, declare and state:

1. I am one of the attorneys representing relator Jeffrey Mazik in this action. I make this supplemental declaration in support of relator's motion under Rule 16 for a temporary stay, modification of the case schedule, and an order of reference. It is filed concurrently with relator's reply on the motion. The declaration is based on my own personal knowledge. If called as a witness hereto, I would and could testify to the following.

2. As an update on Attorney Mendenhall's health status, during the past two weeks, Mr. Mendenhall has required several hospitalizations, as he undergoes treatment for his very serious medical condition. This has caused him to be less available than he was previously. While I, and the attorneys and staff in his office continue to believe that Mr. Mendenhall will be able to return to work in the following months, at this time it is crucial for him to adhere to his physicians' orders, mandating that he schedule rest and not engage in work activities outside certain limited time allotments.

3. In the prior motion and declaration, Mazik's counsel identified key factual issues connected to relator's state *qui tam* claims that require additional discovery in this case. For clarity, once the schedule is modified (and after any stay is lifted), Mazik's counsel intend to seek key discovery on:

- Kaiser's cost submissions to DHCS auditors;
- Kaiser's records associated with the 2017 FY actuarial variance;
- Kaiser's encounter data submissions;
- Kaiser's communications and records regarding state fines.

4. Kaiser waited until October of 2025 to produce a key record underlying relator's state law claims. This was a production of a very large spreadsheet containing a six-year lookback on overpayments identified in Kaiser's ARIS database. During the time that the parties were discussing possible settlement between October and mid-December of last year, attention was directed to this document, but it was not until early 2026, after the

Osinek settlement, that focus turned to Mr. Mazik's claims of overpayments by Kaiser, and the impact of those overpayments on Medicaid cost submissions. Targeted additional discovery is needed to follow up and complete discovery in this area, including data on Kaiser's claims paid information systems and the architecture of the ARIS data fields. Mazik's counsel have identified several specific discovery requests to make in this regard, but we believed that the Rule 16 motion needed to be resolved before serving this additional discovery. It made no sense – and would have been impractical – to seek this discovery while simultaneously substituting counsel and briefing the share motion.

5. Depending on how the Ninth Circuit determines the impact of the *Osinek* settlement on Mazik's federal *qui tam* claims, Mazik's counsel believe that they may need to obtain discovery of the information exchanged between the government and defendants in *Osinek* concerning Kaiser's submissions for capitated payments, its risk adjustment audits and evidence of inflated diagnosis codes. Previously, as stated at the time of the transfer motion, counsel had hoped that such information would be obtained through "cooperation and coordination" with government attorneys. It would not have been practical (or permitted) to demand disclosure of the government's discovery while the government and Kaiser were locked in confidential settlement discussions. In addition, given the possibility (and we think reality) that the *Osinek* settlement precludes Mazik from further recovery (undiminished by what was already paid) on the federal risk adjustment fraud theory, any effort to obtain such discovery prior to the resolution in *Osinek* would have been unreasonable.

6. After obtaining necessary documents, Mazik's counsel intend to take several key depositions, including Marita Janiga (Executive Director of Investigations in Kaiser's National Compliance, Ethics & Integrity Office); Lauren Sutcliffe (former Senior Manager in the Special Investigations Unit) ; and Mia Okinaga (former Vice President of the National Compliance Office). All three individuals were managers of Mazik in the compliance office. We did not expect to complete these depositions before Mazik himself was deposed, or before a full and complete record of events was obtained through

document requests. Relator's counsel were diligent in the conduct of discovery, but such diligence does not mean that a scheduling modification is unneeded now, in light of the substitution and complexities of the case.

7. As shown in the exchanged letters at Defs.' Exhs. D-H, the Pollock firm timely responded to each letter sent by Kaiser's former attorneys, pointing out the viability of state law claims under the facts alleged. As shown through Mendenhall's declaration, we had already served interrogatories seeking discovery of Mazik's state law claims. But until the settlement resolved Mazik's federal theory, the HCC/CDPS distinction and DHCS encounter-data issues had not yet become a focus. We intended to commit such a focus as the case needs required, and to file a motion such as this one to secure sufficient time to do so. All counsel take the Court's deadlines with utmost respect, and the circumstances have led to our filing of the present motions in order to meet the needs of this complex case.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct. Executed this 4th day of May, 2026.

/s/Jeremy L. Friedman
Jeremy L. Friedman

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *et al., ex rel*. JEFFREY MAZIK, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, *et al.*, Defendants	Case No. No.: 2:19-cv-00559-DAD-JDP **NOTICE OF ERRATA RE REPLY IN SUPPORT OF RULE 16 MOTION** **Date: May 18, 2026** **Time: 1:30 PM** **Courtroom 4, 15th Floor** **Hon. Dale A. Drozd**

TO THE COURT, THE PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that relator Jeffrey Mazik and his counsel of record hereby give notice of errata to the **REPLY IN SUPPORT OF MOTION FOR A TEMPORARY STAY,** filed on May 4, 2026. In the reply, relator's counsel mistakenly referred to a March 15, 2026, when the date counsel intended to write was April 15, 2026. *See* Reply, at 2:20 (stating the incorrect date as the date after which Kaiser's counsel refused to extend for relator's deposition and discovery responses), and 3:19 (as the date for discovery cut-off in this case). The error was inadvertent, and it was made while writing the reply brief. Despite the effort to proof read the brief before it was filed, counsel overlooked the error (and a few other non-substantive typographical errors), and the error was not noticed until the following day. The correct date for both typewritten entries is April 15, 2026.

Respectfully submitted,

Dated: May 5, 2026

Law Office of Jeremy L. Friedman
Mendenhall Law Group

By: /s/Jeremy L. Friedman
Jeremy L. Friedman

Attorneys for relator Jeffrey Mazik