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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 MODIFIED MOTION FOR A STAY PENDING RESOLUTION OF APPEAL** **Date: June 1, 2026 (Vacated)** **Time: 1:30 PM** **Courtroom 4, 15th Floor** **Hon. Dale A. Drozd**

INTRODUCTION

Defendants close their opposition to relator's motion for stay in this case under *Landis v. North American Co.*, 299 U.S. 248, 254 (1936), by making three erroneous statements, and by crafting a flawed argument. They state: "Discovery is complete," "the issues are fully framed," and "the case is ready for dispositive motions." None of these statements is true. First, **discovery is *not* complete**. Depending on how the Ninth Circuit rules in Mr. Mazik's appeal in *Osinek* – plaintiff requires further discovery on several important areas, including information that was the subject of the *Osinek* litigation regarding defendants' claims for Medicare Advantage capitated payments, the risk adjustment factors that were used to calculate defendants' capitated payments, and defendants' diagnoses coding which formed the basis of those risk adjustment factors. If Mr. Mazik prevails on his appeal in the Ninth Circuit, none of that discovery will be necessary. Relator will still need time to complete discovery (as specifically identified in briefing on the Rule 16 motion) on his state *qui tam* claims over Medicaid claims, but a significant amount of potentially unnecessary work would be avoided.

Second, the **issues are *not* fully framed**. Until the *Osinek* appeal is concluded, significant uncertainties will plague this case over whether or not relator's federal *qui tam* claim based on false claims for Medicare Advantage payments already have been waived or precluded. And, even if the Ninth Circuit determines that claim remains technically alive, the parties will still be uncertain whether defendants will be entitled to a $556 million offset in damages it would have to pay to the United States on any judgment. Before taking the appeal from Judge Chen's April 10, 2026, Order, Mr. Mazik suggested that those issues be decided in this Court. Now, however, a determination of those issues here would be subject to change when the appeal is resolved.

Finally, the case is ***not* ready for dispositive motions**. In addition to obtaining necessary discovery and learning how the binding framework is settled in the *Osinek* appeal, the facts are that relator's new lead counsel has been unavailable due to a serious health condition; and the undersigned sole practitioner has been, and will be, fully

occupied on pending motions here, the motions before Judge Chen, and now the appeal in the Ninth Circuit. Those facts present substantial reasons why relator sought a temporary stay through an administrative motion, and why – when the Court denied the motion without prejudice because it *would* impact the deadlines for dispositive motions – relator filed his noticed motion seeking relief under Rule 16. Relator's request for a needed change in the case schedule came before any of the case deadlines had passed (including the close of discovery), and as soon as possible after substitution of counsel was allowed and the parties had a chance to meet and confer over the requested change.

Defendants' defective contention is that a stay in this case would "merely postpone adjudication" based on "speculation about how future proceedings may affect later litigation strategy." This argument is fundamentally flawed. The *Osinek* settlement is a *past* event, not a future one. Yes, the Ninth Circuit in the near future will rule upon Mr. Mazik's appeal, and yes, determination of the appeal will affect future decisions that the parties and the Court must make on retention of experts, motions for summary judgment, trial preparations and trial. But there is no "speculation" required to know that key questions are now within the jurisdiction of the appellate court. Nor is it simple "strategy" to determine which claims remain vital and what new damages may be obtained. The appeal in *Osinek* is highly likely to materially affect and control this case, and a stay here until that related appellate proceeding has concluded will preserve the orderly course of justice by simplifying the issues, proof and questions of law.

Defendants, the United States and Mr. Mazik are parties in the *Osinek* appeal. These parties will have complete control over the briefing they submit to the Ninth Circuit. They will have the tools necessary to influence directly the appellate court's determinations on waiver, claim preclusion and damage credit, as well as whether Mr. Mazik is entitled to an 8% share of the *Osinek* settlement proceeds. These are the precise circumstances where a *Landis* stay is appropriate, even more compelling here than in cases where the related appellate proceedings are in the hands of strangers.

REPLY ARGUMENTS

I. The Ninth Circuit in *Osinek* will determine key issues in this case

Defendants assert that the Ninth Circuit appeal in *Osinek* will not decide whether the settlement had preclusive effect on Mazik's claims in this case, or whether Kaiser is now entitled to a damage offset in the amount it already paid to the United States in settlement (ECF 144 at 2:14-16). Kaiser says that the Ninth Circuit's appeal "will not control this case," only that it merely "may provide guidance" (*id*., at 2:17, 3:4).

This characterization of Mr. Mazik's appeal in *Osinek* is flat out wrong. Whether the *Osinek* settlement waived, precluded or mooted relator's federal claim in this Court are the very questions now before the Ninth Circuit. Mr. Mazik's motion in *Osinek* was brought under the alternate remedy provision of the False Claims Act, 31 U.S.C. § 3730(c)(5). Among the issues expressly raised by Mr. Mazik was whether the *Osinek* settlement constituted a settlement of relator's federal *qui tam* claims here. *See* ECF 137-2, at 37:23-38:5 (Exh. C); 96:12-28 (Exh. D); *Osinek* Dkt. No. 448 (reply on motion), at 9:27-10:8). Where the government's settlement in an alternate proceeding settles all or part of the relator's *qui tam* claim, the relator is entitled to a share. *See United States ex rel. Bledsoe v. Cmty. Health Sys., Inc*., 342 F.3d 634, 649-650 (6th Cir. 2003) ("If indeed the government settled Relator's claims, either Defendants would assert an accord and satisfaction defense (which, if successful, would deny Relator part or all of his rightful share of the recovered funds), or Defendants would be forced to pay the civil penalties and double or treble damages associated with the very same claims for which they had already paid penalties and damages by way of the settlement. Under either result, adverse consequences (to either Relator or Defendants) would ensue that the FCA had not intended") (*citin*g S. Rep. 99-345, at 27, 1986 U.S.C.C.A.N. at 5292 ("While the Government will have the opportunity to elect its remedy, it will not have an opportunity for dual recovery on the same claim or claims").

Similarly, Mr. Mazik argued that even if his *qui tam* claims were not waived or precluded entirely, defendants would still be entitled to an offset – a "damage credit" in a

recovery from a judgment on his federal *qui tam* claim in this action . *See* ECF 137-2, at 38:12-14; 98:1-24. Like the doctrines of waiver and claim preclusion, and the alternate remedy provision itself, the concept of damage credit arises out of the same "one recovery" rule, precluding the United States from recovering twice on the same damages already obtained. When the *qui tam* defendant is entitled to claim a damage credit against the relator's action based upon money already paid in an alternate proceeding, the relator is entitled to a share out of that alternate recovery. *See United States v. Van Dyck*, 866 F.3d 1130, 1135 n.3 (9th Cir. 2017) (government acknowledges that relator is entitled to claim a share to the extent that *qui tam* defendant "is entitled to a damage credit"); *United States v. Couch*, 906 F.3d 1223, 1228-29 (11th Cir. 2018) (citing *Van Dyck*).

Judge Chen clearly understood that these were central issues raised on Mr. Mazik's motion, as he addressed them directly in denying the motion for a share. He clearly also understood the potential for inconsistencies between his decision with subsequent decisions by this Court, stating that any argument by the same parties in this Court would have to "account for" his rulings on the share motion. ECF 140 at 24:8-12. And, while Judge Chen contemplated deferring his ruling until this Court addressed these issues, in the end he issued his decision, directing the clerk to enter final judgment on the claim so that the clock for Mr. Mazik to take an appeal began to run. *Id*., at 26:15-16.

The circumstances here thus present a classic case for a *Landis* stay. Not only would judicial economy and orderly justice be greatly served by a relatively brief stay, waiting until the *Osinek* appeal is concluded before addressing these key issues would be the most effective – if not the only – way to avoid risk of inconsistent judgments. Defendants' arguments to the contrary boil down to the nonsensical contention that the appeal would only impact "future dispositive motion practice" (ECF 144 at 7:19). And yet, that is exactly the point. Rather than cause the parties and the Court to brief, address and resolve issues that are going to be addressed and resolved by the court of appeal, relator reasonably and respectfully requests that the Court enter a *Landis* stay of the entire case until the *Osinek* appeal concludes.

II. Contrary to defendants' repeated assertion, relator has not completed discovery in this case

Their main factual premise of defendants' opposition to the stay is the assertion that fact discovery has been completed. Defendants repeat "discovery has been completed" numerous times. *See e.g.*, ECF 144 at 2:4 ("Relator has completed fact discovery"); 2:19 ("fact discovery is now finally complete"); 4:25 ("Fact discovery is complete"); 9:4 ("fact discovery is complete"); 10:25 ("With fact discovery complete"); 12:14-15 ("Discovery is complete"). Despite the many times Kaiser repeats the mantra, this simply is not the case. Indeed, one prong of the pending motion by Mr. Mazik is to secure adjustment to the case scheduling order so that he may conduct necessary discovery on key material facts. *See* ECF 137 at 16:8-18:28, 21:8-23:15; ECF 141 at 6:15-7:28. To secure a ruling on this motion, defendants push past these facts.

If the Ninth Circuit determines that Mr. Mazik's federal risk adjustment claim under the False Claims Act remained vital after the *Osinek* settlement, Mazik would need to complete discovery on those claims. Crucially, a substantial portion of that discovery was already obtained by the United States in the *Osinek* litigation. For example, the government's *Osinek* complaints-in-intervention and relator's operative complaint here share a focus on the same underlying false claims: the claims for capitated payments that Kaiser defendants submitted to the government for its Medicare Advantage enrollees. The focus of both complaints on why those claims were false is on the risk adjustment factors that Kaiser used to calculate its Medicare Advantage submission. And, the reasons for the inflated risk adjustment factors alleged by both the United States and Mr. Mazik centered on the diagnoses codes upon which defendants relied when they reported their risk adjustment factors. The government no doubt investigated and took discovery on facts which may not overlap with Mr. Mazik's claims – *e.g.*, the mechanisms that Kaiser used to pressure internal physicians to add diagnoses codes. The fact that those additional facts need not be discovered in this litigation does not negate the clear overlap of facts upon which relator still requires discovery.

It was not reasonable to expect Mr. Mazik to have compelled the United States to share access to that extensive discovery while the government and Kaiser were locked down in settlement discussions in the Fall and Winter of 2025. And, it potentially would be a complete waste of resources to seek that body of evidence now. If – as Mr. Mazik expects – the Ninth Circuit finds his federal claims to have been waived, precluded or moot, engaging over defendants' Medicare Advantage claims, federal risk adjustment factors or Medicare coding data would have been, and would be, unnecessary.

Moreover, Mr. Mazik still requires specific discovery on his state *qui tam* claims. In the briefing on relator's Rule 16 motion, Mr. Mazik identifies specific material factual issues which require further discovery, and he describes a number of specific avenues he needs to follow to obtain the evidence to prove up his Medicaid claims. This includes:

- Kaiser's cost submissions to DHCS auditors, which were used to calculate defendants' Medi-Cal capitated payments;
- Kaiser's records associated with the 2017 FY actuarial variance, where defendants were found to have claimed $24 million in costs that could not be verified by the state auditors and actuaries;
- Kaiser's encounter data submissions, which California repeatedly demanded from defendants, and which defendants repeatedly failed to provide;
- Kaiser's communications and records regarding state fines, which were levied upon defendants after Kaiser admittedly failed to comply;
- Key records underlying the ARIS database spreadsheet corroborating relator's six-year shadow audit that Mr. Mazik conducted in 2016, that defendants held back from relator in this litigation until October of 2025;
- Depositions of key witnesses, including Marita Janiga, Lauren Sutcliffe, and Mia Okinaga – managers in defendants' compliance office.

See ECF 141 at 6:15-7:28; ECF 142, at ¶¶3, 6 and 7.

Relator has not yet completed fact discovery.

III. Defendants' complaint against the filing of "serial" motions is without merit

Defendants complain that relator initially filed a motion for a temporary stay in discovery and Rule 16 relief (ECF 137), and rather than address the *Landis* stay in the reply brief or file a motion after the initial motion was resolved, he filed a second motion (ECF 139). Defendants do not grapple with the obvious. At the time of his administrative motion (ECF 135) or his Rule 16 motion, Judge Chen had not ruled on Mr. Mazik's motion for a share of the *Osinek* settlement proceeds, and Mr. Mazik therefore had not noticed the appeal. In fact, relator filed his Rule 16 motion here after the motion hearing in *Osinek,* where Judge Chen openly stated that he was considering deferring his ruling until this Court could address the overlapping issues of waiver, claim preclusion and damage offset. *See* ECF 140 at 47:1-6.

After Judge Chen issued his ruling, Mr. Mazik noticed his appeal, and the parties here met and conferred over a stay of the entire case, defendants protested against the thought that Mr. Mazik would change the relief requested in his reply brief. And yet, the need for a stay in the entire case under *Landis* directly impacted, and modified, relator's request in his initial motion. Instead of a temporary stay in discovery and a six-month modification of the case schedule, relator requested a stay of the entire case, and a resetting of pre-trial deadlines after the *Osinek* appeal concluded. Although good cause continued to grant the requests in the initial Rule 16 motion, if the Court were to grant a stay under *Landis*, the initial motion would be moot.

The only sensible way to ensure that the Court was advised of relator's requests and defendants' non-agreement was to notice a separate motion to modify, or add to, the original motion, set it for hearing on the next available date, and refer to the fact that there were related motions in the briefing. Relator's filings were not improper.

IV. The suggestion that Mr. Mazik lacked diligence is unsupported and wrong

Defendants incorporate their response to the Rules 16 motion and argue that relator was not diligent in the prosecution of this case. ECF 144 at 4-5. And yet, they ignore the complete factual record put forth by relator on the Rule 16 motion not only showing his

diligent efforts in this case, but also explaining how the schedule here had always been delayed because of the pending related proceedings in *Osinek*. Indeed, in the joint status report, the parties agreed to, and the Court adopted, a case schedule that would have had this action trail proceedings in *Osinek* by at least 90 days. ECF 110 at 2-3.

Defendants' assertion boils down to a claim that "gaps" in relator's investigation "between October of 2025 and April of 2026" "reflect a lack of diligence." ECF 144 at 5:2, 10:8-9. Such a purported delay for this period of time would not refute relator's showing of diligence. More importantly, the claim is untrue. From October and into December of 2025, the parties were involved in repeated settlement discussion of Mr. Mazik's claims. This was the same period during which the *Osinek* case was stayed pending settlement discussions between defendants and the United States. Mr. Mazik and his attorneys were not privy to those discussions, and as a result, Mr. Mazik was not able to make necessary headway in his settlement discussions with defendants. But both sides remained committed to the discussions, including the attempt to get information from defendants on the late-produced ARIS data. It would have been futile and potentially disruptive for Mr. Mazik to demand that defendants produce underlying claims, risk adjustment and diagnosis code data while the United States was getting close to a settlement agreement that might waive, settle, preclude or moot his federal *qui tam* claim.

Subsequently, starting in December of 2025, but spilling into early January of 2026, relator underwent the process of substitution of lead counsel. At that moment too it would have been inappropriate for former counsel to complete the open discovery that substituted counsel might intend to conduct. Mr. Mendenhall then signed a substitution form, but it was disregarded until his *pro hac vice* application was filed. When the *pro hac vice* application was filed, the substitution was delayed, and counsel were directed to file a new substitution form.

By January 14, 2026, when the *Osinek* settlement was disclosed, Mr. Mendenhall's health condition took a priority, but both attorneys still managed to file a notice of claim in the Northern District the following day. As counsel then engaged in the meet and

confers, procedural motions and drafting of the alternate remedy motion as directed by Judge Chen, counsel then began to confer with Kaiser's new substituted counsel in this case, including over the requested scheduling changes to account for the substitutions. As Mr. Mendenhall's declaration shows (ECF 137-1), counsel required time to transfer, review and comprehend the massive body of records obtained in this litigation. After completing the meet and confer with defense counsel over the stay request, relator's counsel filed the administrative motion for a stay, and then the Rule 16 motion.

This record does not establish "investigative gaps" or "lack of diligence." It shows a relator in a complex non-intervened *qui tam* case with a highly valued claim (much of which was resolved in the *Osinek* settlement) going through a change of counsel, where the new attorney was unavailable at times due to factors beyond his control, and the existing attorney was diligent in the pursuit of necessary motion practice (including the timely request of Rule 16 relief). Defendants' self-serving, unsupported assertions are simply without merit.

CONCLUSION

For the foregoing reasons, and those stated in the moving papers and related motion, relator Mazik respectfully requests that the Court stay the entire action until the Ninth Circuit resolves the appeal brought by Mr. Mazik in the *Osinek* case, and that the parties be ordered to submit a further case management statement within 30 days of the Ninth Circuit mandate.

Respectfully submitted,

Dated: May 28, 2026

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