

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

HEALTH CARE SERVICE
CORPORATION, A MUTUAL LEGAL
RESERVE COMPANY

Plaintiff

v.

NEUROMONITORING ASSOCIATES,
LLC, PHYSICIAN OVERSIGHT, LLC
AND MONITORING ASSOCIATES LLC

Defendants.

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Case No. 5:26-CV-22-RWS-JBB

**ORDER STAYING DISCOVERY PENDING REPORT AND RECOMMENDATION
ON FORTHCOMING MOTION TO DISMISS AMENDED COMPLAINT**¹

Before the Court is Defendants’ Motion to Stay Discovery Pending Resolution of Defendants’ Rule 12(b)(1) and 12(b)(6) Motion to Dismiss. Dkt. No. 32. Having carefully considered the relevant briefing and as discussed with the parties during the May 27, 2026 hearing, the Court **GRANTS** the motion and stays discovery until the undersigned enters a Report and Recommendation on Defendants’ forthcoming motion to dismiss the amended complaint.

BACKGROUND

Plaintiff Health Care Service Corporation, a Mutual Legal Reserve Company (“Plaintiff”) alleges that Defendants Neuromonitoring Associates, LLC; Physician Oversight, LLC; and Monitoring Associates LLC (“Defendants”) engaged in two different types of healthcare fraud schemes (“NSA” theory and “kickback” theory) involving intraoperative neuromonitoring (“IOM”) services. On April 21, 2026, Defendants filed, pursuant to Federal Rules of Civil

¹ The above-referenced case was referred to the undersigned United States Magistrate Judge for pretrial purposes in accordance with 28 U.S.C. § 636.

Procedure 12(b)(1) and 12(b)(6), a Motion to Dismiss and Request for Judicial Notice. Dkt. No. 25.

Two days before its response was due, Plaintiff filed an amended complaint.² See Dkt. No. 40. Therefore, as discussed with the partes during the May 27, 2026 hearing and scheduling conference, the Court denied Defendants' motion to dismiss the original complaint (Dkt. No. 25) as moot and without prejudice to refile, in anticipation of a motion to dismiss the amended complaint. See Dkt. No. 42 (further ordering the parties to meet and confer regarding a briefing schedule on the forthcoming motion to dismiss the amended complaint and noting the Court will schedule oral argument on the motion to dismiss the amended complaint shortly after the parties file the agreed briefing schedule).

Meanwhile, on May 5, 2026, Defendants filed the above motion to stay discovery, which the Court considers in the context of the forthcoming motion to dismiss the amended complaint. Defendants contend their motion to dismiss will have a significant likelihood of success on the merits because every court to rule on Plaintiff's "NSA theory" has dismissed it at the motion-to-dismiss stage pursuant to Federal Rule of Civil Procedure 12(b)(1), and because Plaintiff's "kickback theory" fails to meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b), which stands as a gatekeeper to discovery. Dkt. No. 32 at 1-5, 7-11; Dkt. No. 37 at 2 (citing *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 185–86 (5th Cir. 2009)). According to Defendants, allowing discovery to proceed prior to consideration of the forthcoming motion to

² The First Amended Complaint asserts the following claims: (1) Fraud—Kickback Scheme (Count I); (2) Fraud—IDR Submission Scheme (Count II); (3) Negligent misrepresentation—Kickback Scheme (Count III); (4) Negligent misrepresentation—IDR Submission Scheme (Count IV); (5) Money had and received—Kickback Scheme (Count V); (6) Money had and received—IDR Submission Scheme (Count VI); (7) Declaratory and injunctive relief—Kickback Scheme (Count VII); (8) Declaratory and injunctive relief—IDR Submission Scheme (Count VIII); (9) Violation of RICO 18 U.S.C. § 1962(c)—IOM Referral Enterprise (Count IX); (10) Violation of RICO 18 U.S.C. § 1962(c)—IDR Submission Scheme (Count X); and (11) Vacatur of NSA IDR Awards under 9 U.S.C. § 10 (against Physician Oversight and Monitoring Associates only) (Count XI). See Dkt. No. 40.

dismiss would impose undue burden and expense on Defendants, particularly because the discovery between the kickback and NSA theories have so much overlap. Dkt. No. 32 at 11-12. Finally, Defendants contend a short stay of discovery will not prejudice Plaintiff. *Id.* at 13-14.

In response, Plaintiff asserts Defendants have failed to demonstrate that this case presents the “very rare” circumstance that warrants a stay of discovery. Dkt. No. 35 at 1, 3. According to Plaintiff, Defendants have not shown that their motion to dismiss is likely to succeed in its entirety, particularly with respect to its kickback claims.³ *Id.* at 1, 3-10. Plaintiff further asserts Defendants have failed to demonstrate they are facing or will face unduly broad discovery requests or will suffer undue hardship without a stay. *Id.* at 10-13. Finally, Plaintiff argues any stay in this case would unduly lengthen litigation and result in additional harm to Plaintiff. *Id.* at 13-14.

APPLICABLE LAW

Under Local Rule CV-26 and Federal Rule of Civil Procedure 26, the presumption is that discovery shall proceed notwithstanding the filing of a motion to dismiss. *Health Choice Grp., L.L.C. v. Bayer Corp.*, No. 5:17CV126-RWS-CMC, 2018 WL 5728515, at *2 (E.D. Tex. Apr. 25, 2018). However, “[a] trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.” *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987). The relevant “factors that inform the court’s discretion are: (1) the breadth of discovery sought; (2) the burden of responding to such discovery; and (3) the strength of the dispositive motion filed by the party seeking a stay.” *Armstrong v. Cumberland Acad.*, No. 6:20-CV-00526, 2021 WL 2784296, at *2 (E.D. Tex. Mar. 22, 2021) (quoting *Von Drake v. Nat’l Broad. Co.*, No. 3:04-cv-652-R, 2004 WL 1144142, at *1 (N.D. Tex. May 20, 2004)); *see also Health*

³ Plaintiff concedes its NSA claims are likely to be dismissed in light of this Court’s recent order in *Blue Cross Blue Shield of Tex. v. HaloMD, L.L.C.*, No. 5:25-cv-132, Dkt. No. 64 (E.D. Tex. May 22, 2026).

Care Group, 2018 WL 5728515, at *2 (“An order staying discovery should only be issued upon a showing of ‘good cause’ by the movant.”). Staying discovery “may be appropriate where the disposition of a motion to dismiss ‘might preclude the need for the discovery altogether thus saving time and expense.’” *Id.* (citation omitted). In addition, courts consider the potential “harm caused by the delay in discovery.” *Clay v. Wagner*, No. 18-cv-360, 2018 WL 10810007, at *1 (W.D. Tex. Oct. 9, 2018).

DISCUSSION

To be sure, it is not the Court’s ordinary practice to stay discovery pending rulings on motions to dismiss. *See Health Care Group*, 2018 WL 5728515, at *2-3 (denying a motion to stay discovery based on the relators’ alleged failure to satisfy Rule 9(b)’s pleading obligations because the court was not convinced the motion to dismiss was so clearly meritorious and truly case dispositive as to warrant a stay of discovery, especially considering the defendants had only presented the “usual inconveniences and costs that are associated with discovery practice” and had not sufficiently explained how they would suffer unique hardship if discovery proceeded in line with the court’s ordinary practice). However, as explained below, Defendants have shown good cause—under the unique facts of this case—to depart from this Court’s ordinary practice.

For at least part of Plaintiff’s case, Defendants’ forthcoming motion to dismiss clearly raises a threshold jurisdictional question that should be resolved before discovery proceeds. The cases relied upon by Defendants in their motion to stay, including District Judge Schroeder’s recent order in *Blue Cross Blue Shield of Tex. v. HaloMD, L.L.C.*, No. 5:25-cv-132, Dkt. No. 64 (E.D. Tex. May 22, 2026), have dismissed similar NSA theories for lack of subject matter jurisdiction. *See Anthem Blue Cross Life & Health Ins. Co. v. HaloMD L.L.C.*, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026) (rejecting the plaintiff’s vacatur, RICO, fraud, and negligent misrepresentation

claims in their entirety and dismissing them for lack of subject matter jurisdiction); *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-1343, Dkt. No. 105 (M.D. Fla. Apr. 16, 2026); *UnitedHealthcare of Pennsylvania, Inc. v. Northstar Anesthesia of Pennsylvania, L.L.C.*, No. 2:25-cv-07187, Dkt. No. 43 (E.D. Pa. Apr. 28, 2026).

To the extent there are other claims (kickback, unlicensed monitoring, vacatur) which Plaintiff argues are not affected by Judge Schroeder’s ruling in *HaloMD*, Defendants argue certain claims are “interrelated” with the NSA claims rejected by Judge Schroeder and the other courts and may be dismissed for the same or similar reasoning. As noted below, Plaintiff does not dispute the discovery needed for the kickback theory significantly overlaps with the discovery needed for the NSA theory—and critically, Plaintiff has not provided a plan on how to move forward with kickback discovery only. Therefore, unlike in *Health Care Group*, here the Court is persuaded, upon preliminary review, that the forthcoming motion to dismiss may be truly case dispositive as to warrant a temporary stay of discovery, at least until the undersigned can issue (on an expedited basis) a report and recommendation. This factor weighs in favor of a stay.

The burden factor also weighs in favor of a stay. Unlike in *Health Care Group*, Defendants’ concerns as to burden go beyond the “usual inconveniences and costs that are associated with discovery practice.” 2018 WL 5728515, at *3. Regarding the NSA claims which have already been rejected by Judge Schroeder in *HaloMD*, Defendants persuasively argue that discovery—if allowed to proceed—would involve extensive review of attorney-client privileged communications and attorney work product related to the IDR proceedings central to those claims and would also involve “boundless” review of each IDR between the parties—including records containing individual patient claim information—which would necessitate burdensome review efforts and processes to protect against violations of HIPAA. Dkt. No. 32 at 11. Regarding any

kickback (or other) claims which may not be affected by Judge Schroeder's order in *HaloMD*, Defendants argue the discovery as to those claims represents "another significant burden and expense on Defendants" (*id.* at 12), especially considering the overlap between such claims and discovery related to IDR processes.

Plaintiff acknowledges this is "complex healthcare litigation" (Dkt. No. 35 at 11) and does not dispute there may be overlap between certain non-NSA claims (*i.e.*, vacatur) and certain discovery as to IDR processes/eligibility. However, in response to these concerns, Plaintiff makes several arguments/offers: (1) Plaintiff argues that initial discovery in complex cases such as these typically focuses on "more general topics" rather than actual claim-specific data which is generally requested and produced later (Dkt. No. 35 at 11); (2) Plaintiff offers to stipulate to measures such as "targeted claims draws or sampling" to mitigate burdensome claims review (*id.*); and (3) Plaintiff offers to consider stipulating to a temporary narrowing of discovery that would remove IDR eligibility issues and focus on kickback-related issues until resolution of the motion to dismiss.

However, there is no stipulation before the Court to consider. Whereas a temporary stay will also avoid running afoul of Judge Schroeder's decision and order in *HaloMD*. As it stands now, were the Court to deny Defendants' motion to stay, the Court's Discovery Order, which is being entered contemporaneously herewith, would require—without limitation to "more general topics" or to non-eligibility discovery only—that the parties disclose, within seventy-five days and without awaiting a discovery request, "a copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action," among other things. Without such limitations, the Discovery Order would effectively ignore Judge Schroeder's order in *HaloMD*.

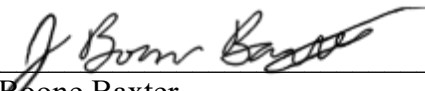
Finally, any prejudice to Plaintiff from a temporary stay of discovery is minimized because the Court will consider the forthcoming motion to dismiss on an expedited basis and Defendants have agreed that discovery may be reopened, if warranted, at the time the Report and Recommendation is entered rather than after full resolution of the motion to dismiss by the District Judge. Considering this, and further considering the unique concerns as to burden and the inevitable overlap between discovery responsive to Plaintiff's NSA claims and discovery responsive to Plaintiff's non-NSA claims, it is

ORDERED that Defendants' Motion to Stay Discovery Pending Resolution of Defendants' Rule 12(b)(1) and 12(b)(6) Motion to Dismiss (Dkt. No. 32) is **GRANTED**. It is further

ORDERED that all discovery, including the initial and additional disclosures deadlines contained in the Discovery Order entered contemporaneously herewith, are **STAYED** pending the Report and Recommendation on Defendants' anticipated motion to dismiss Plaintiff's amended complaint. Following a final ruling on the motion to dismiss, the parties will be directed to update the deadlines in the Discovery Order and Docket Control Order as needed, and the Court will consider moving forward the trial date if warranted.

IT IS SO ORDERED.

SIGNED this the 29th day of May, 2026.



J. Boone Baxter
UNITED STATES MAGISTRATE JUDGE