IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Dennis Black, *et al.*, Plaintiffs, v. Pension Benefit Guaranty Corporation, Defendant.	Case No. 2:09-cv-13616 Hon. Arthur J. Tarnow Magistrate Judge Mona K. Majzoub

PLAINTIFFS' MOTION REQUESTING JUDGE MAJZOUB DISSOLVE THE PARTIAL STAY OF HER AUGUST 21, 2013 ORDER

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STATEMENT OF ISSUES PRESENTED

Whether the Court should dissolve the partial stay of its August 21, 2013 Order requiring the PBGC to produce improperly withheld documents given that (1) the partial stay is causing Plaintiffs substantial harm by delaying the progress of the litigation; (2) the PBGC is unlikely to succeed on its Rule 72 objections to the underlying Order; (3) the Defendant will not suffer any irreparable harm absent a stay, as the Supreme Court has made clear that any valid privilege arguments can be effectively vindicated in an appeal from a final judgment; and (4) the public interest strongly favors moving the litigation forward.

STATEMENT OF COMPLIANCE WITH L.R. 7.1(a)

On February 3, 2014, counsel for the parties conferred by email concerning the relief requested in this motion, during which counsel for the PBGC advised that it does not consent to the relief requested herein.

STATEMENT OF CONTROLLING AUTHORITY

1. In considering whether to authorize a stay pending appeal, a court should consider: (1) whether the moving party has a strong or substantial likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm if the lower court order is not stayed; (3) whether staying the lower court order will substantially injure other interested parties; and (4) where the public interest lies. *Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004).

2. "In order to justify a stay of the district court's ruling, the [Appellant] must demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted." *Mich., Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991) (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)).

3. No serious questions exist as to the merits. Discovery rulings, like the one here, are reviewed for abuse of discretion. *Serrano v. Cintas Corp.*, 699 F.3d 884, 899-900 (6th Cir. 2012), *cert. denied*, 134 S. Ct. 92 (2013). Likewise, because this matter comes to the Court pursuant to an objection to a ruling on a non-dispositive pre-trial motion, reversal is warranted only if the Magistrate Judge's ruling is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a). As discussed more fully in Plaintiffs' opposition to Defendant's Rule 72 Objections, Magistrate Judge Majzoub's order was demonstrably correct; it did not in any way abuse her discretion or amount to clear error.

4. No irreparable harm would occur through Defendant's compliance with Judge Majzoub's order. Post judgment appeals generally suffice to protect the rights of litigants and assure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence. *Mohawk, Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009); *Holt-Orsted v. City of Dickson*, 641 F.3d 230, 240 (6th Cir. 2011) (party dissatisfied with order requiring disclosure of purportedly privileged information "ultimately can avail themselves of a post-judgment appeal which, under *Mohawk*, suffices 'to protect the rights of the litigants and preserve the vitality of the attorney-client privilege.'").

5. The Plaintiffs have been significantly injured by Defendant's extended delays in providing discovery and ignoring court orders, and the public interest will be served by moving this litigation forward. *Freeman v. City of Detroit*, No. 09-CV-13184, 2011 U.S. Dist. LEXIS 68914, at *7 (E.D. Mich. June 24, 2011).

INTRODUCTION

On August 21, 2013, Magistrate Judge Majzoub entered an Order (Dkt. No. 231) (the "Waiver Order") requiring the Defendant Pension Benefit Guaranty Corporation ("PBGC") to produce to Plaintiffs by September 30, 2013 improperly withheld documents responsive to discovery requests propounded in 2011, including, *inter alia*, documents improperly withheld since that time as privileged. The basis of the Court's privilege ruling was that the PBGC's failure to produce a privilege log for more than one year after the Court ordered the PBGC to comply with Plaintiffs' 2011 discovery requests waived its ability to assert any privileges or protections as to those document requests.

On August 30, 2013, the PBGC filed a motion for reconsideration of the Waiver Order (Dkt. No. 232) and an emergency motion for stay pending reconsideration of the Court's Waiver Order (Dkt. No. 233). While those motions were pending, the PBGC filed objections to the Waiver Order pursuant to Fed. R. Civ. P. 72 (Dkt. No. 234) (the "Rule 72 Objections"), which asserted the same legal arguments presented in its motion for reconsideration. The PBGC also filed a second emergency motion for stay, this time asking for a stay of the Waiver Order pending resolution of the Rule 72 Objections (Dkt. No. 235).

On September 5, 2013, Judge Tarnow referred the PBGC's motion for reconsideration and first emergency stay motion to Magistrate Judge Majzoub. (Dkt. No. 236). Magistrate Judge Majzoub then denied the PBGC's motion for reconsideration of the Waiver Order (Dkt. No. 237), addressing each of the PBGC's arguments and holding that the PBGC had not shown any palpable defect in the Waiver Order, and that the PBGC had not demonstrated that the Court or the Parties had been misled. *Id*. at 4. The Court's rejection of the PBGC's reconsideration motion made the PBGC's first emergency stay motion (which requested a stay pending resolution of the motion for reconsideration) moot. *Id*. However, while the first emergency motion for stay was now moot, Magistrate Judge Majzoub entered, *sua sponte,* a partial stay (the "Partial Stay"), "in consideration of the fact that Defendant PBGC ha[d] recently filed an objection to the [Waiver Order]," staying the portion of the Order requiring the PBGC to produce documents improperly withheld on the basis of privilege until the time that Judge Tarnow resolves the PBGC's Rule 72 Objections, or until the Court otherwise orders. *Id*.

Plaintiffs now ask Magistrate Judge Majzoub to dissolve the Partial Stay. Plaintiffs respectfully submit that the Partial Stay's continued imposition is no longer appropriate. Given that the Court did not state it was undertaking the

review of the traditional four-part inquiry that normally accompanies requests for injunctive relief in this circuit[1], the purpose of the Partial Stay seems to have been to put in place a temporary stopgap to allow Judge Tarnow initial time to review the arguments raised in the PBGC's Rule 72 Objections, without disclosure looming, so that the PBGC would not be in the process of production in the event Judge Tarnow identified a palpable error in the Waiver Order. However, in the four months during which the PBGC's Objections have been fully briefed, there has not been a ruling to suggest that the Waiver Order was improper. Thus, to the extent that the Partial Stay was entered to give Judge Tarnow an initial opportunity to consider the PBGC's Rule 72 Objections without disclosure immediately looming, that purpose has been fulfilled, with the Waiver Order not having been overturned.

Moreover, the continued imposition of the Partial Stay is delaying the progress of the litigation, and consequently imposing a substantial hardship upon Plaintiffs. Plaintiffs, the Court, and the public in general all have a significant

[1] *See, e.g., Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004) (noting that the relevant factors are: (1) whether the moving party has a substantial likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm if the lower court order is not stayed; (3) whether staying the lower court order will substantially injure other interested parties; and (4) where the public interest lies).

interest in avoiding unnecessary delays in litigation. The Court made a determination that Plaintiffs are entitled to these improperly withheld documents, and rejected the PBGC's motion for reconsideration of that decision. Absent a finding by this Court that the PBGC can meet the four-part inquiry justifying injunctive relief, Plaintiffs are entitled to avoid further delays in closing out discovery in this case, and to do so with the benefit of the documents the PBGC has improperly withheld. Because the PBGC has not and cannot make the requisite showing of irreparable harm or likelihood of success, and because the equities argue strongly against any further delays, the Partial Stay should be dissolved, and the PBGC should be ordered to comply with the Waiver Order forthwith.

ARGUMENT

I. THE PARTIAL STAY IS DELAYING THE PROGRESS OF THE LITIGATION

As the Court is well aware, the discovery disputes in this case have been contentious and protracted, and those disputes have significantly delayed the litigation's progress. Indeed, these disputes have required the parties to seek six separate extensions from the Court, such that this action is now approaching its fifth year, with discovery still unconcluded. These delays exact a heavy toll from the Plaintiffs, who are not well-heeled corporations or government agencies, but

retirees living on reduced pensions. Every month of continued delay brings potential witnesses in this case closer to a claim of forgetfulness, additional legal costs, and painfully postpones the final resolution to which all litigants are entitled. The delay engendered by the Partial Stay is no less harmful. The documents that the PBGC is improperly withholding (which number in the thousands) are likely central to the Plaintiffs' claims. Plaintiffs have already been significantly prejudiced by having to conduct numerous depositions without the benefit of these documents, and they, respectfully, should not have to endure additional harm by having to proceed blindly with discovery.

The PBGC has attempted to minimize the Partial Stay's harm to Plaintiffs by pointing to the delays Plaintiffs are experiencing in their attempts to obtain discovery from the US Treasury. *See* Dkt. No. 243 at 4. The thrust of the PBGC's argument seems to be that, because it is unclear when or if the Plaintiffs will obtain the discovery from the Treasury, all other discovery in this case must come to a halt. The argument is meritless. In the first place, the dispute with the Treasury has been fully briefed since November 20, 2013, and has been scheduled for hearing in March 2014. More importantly, the fact that the Treasury has been able temporarily to stall Plaintiffs' discovery rights in one forum does not justify the PBGC in doing the same here in the Eastern District of Michigan. This case's

progress is largely stalled, and dissolving the Partial Stay is a necessary first step in bringing the litigation to its conclusion.

II. THE PARTIAL STAY CANNOT BE JUSTIFIED UNDER THE TRADITIONAL INJUNCTIVE RELIEF ANALYSIS

In considering whether to authorize a stay pending appeal or other review, courts typically undertake a familiar four-part inquiry: (1) whether the moving party has a strong or substantial likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm if the lower court order is not stayed; (3) whether staying the lower court order will substantially injure other interested parties; and (4) where the public interest lies. *Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004). While the manner in which the Court draws the balance among these factors can vary from case to case, ultimately the real question for this Court is whether the PBGC can demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153-54 (6th Cir. 1991) (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)). An injunction staying the Waiver Order cannot be justified under these principles, as the PBGC can establish none of the four stay factors here, and the harm to Plaintiffs and the public interest from continued delay is substantial.

A. THE PBGC IS UNLIKELY TO SUCCEED ON ITS RULE 72 OBJECTIONS

A continued stay of the Waiver Order is clearly inappropriate under the first injunctive relief factor -- whether the moving party has a strong or substantial likelihood of success on the merits of its appeal. *Family Trust Found.*, 388 F.3d at 227. The Waiver Order, which is the subject of the PBGC's Rule 72 Objections, is reviewed on a clearly erroneous or contrary to law standard. 28 U.S.C. § 636(b)(1)(A). A factual finding is clearly erroneous or contrary to law when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *United States v. Smith*, 263 F.3d 571, 581 (6th Cir. 2001) (citations omitted). "If two permissible views of the evidence exist, a magistrate judge's decision cannot be 'clearly erroneous.'" *Hennigan v. GE Co.*, No. 09-11912, 2010 U.S.Dist. LEXIS 111757, at *5 (E.D. Mich. Oct. 20, 2010) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)). Legal conclusions are reviewed under the "contrary to law" standard, meaning they should be overturned only where they "contradict or ignore applicable precepts of law." *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff'd mem.*, 19 F.3d 1432 (6th Cir. 1994).

In the Waiver Order, Magistrate Judge Majzoub found, *inter alia*, that the "boilerplate" objections of privilege made by the PBGC in its 2011 discovery responses were "tantamount to filing no objections at all." *See* Dkt. No. 231 at 7.

This holding is consistent with the rulings of this Court that have dealt with boilerplate objections. *See, e.g.*, *PML N. Am., L.L.C. v. World Wide Personnel Servs. of Va. Inc.*, No. 06-14447, 2008 U.S. Dist. LEXIS, at *5 (E.D. Mich. Apr. 21, 2008); *Cumberland Truck Equip. Co. v. Detroit Diesel Corp.*, No. 05-74594, 2007 U.S. Dist. LEXIS 84854, at *9 (E.D. Mich. Nov. 16, 2007)).

Magistrate Judge Majzoub then considered Plaintiffs' argument that the PBGC should be deemed to have waived its right to assert those privileges in light of the specific facts of this case. As noted above, under the Federal Rules, the PBGC was required specifically to state its privilege objections in making its Rule 34 responses, which were made in October and November 2011, approximately twenty-two months prior to the Waiver Order. Noting that there was disagreement about whether the PBGC needed to assert those privileges prior to her March 9, 2012 Order granting Plaintiffs' Second Motion to Compel (the "March 9, 2012 Order"), Magistrate Judge Majzoub found that, "[e]ven assuming Defendant is correct in arguing that it was not required to begin logging its privileged documents until after the March 9, 2012 order was entered, the order was entered well over one year ago." Dkt. No. 231 at 7. Further noting that the parties both agreed that no privilege log had yet been provided as of the briefing of Plaintiffs' Rule 37 motion to compel (Dkt. No. 218), the Magistrate Judge found the PBGC

had waived its right to assert privilege. *Id*. This finding too is well in keeping with applicable law. *See, e.g.*, *Carfagno v. Jackson Nat'l Life Ins. Co.*, No. 5:99 cv 118, 2001 U.S. Dist. LEXIS 1768, at *4 (W.D. Mich. Feb. 13, 2001) ("[i]f the time limits set forth in the discovery rules are to have any meaning, waiver is a necessary consequence of dilatory action in most cases. 'Any other result would . . . completely frustrate the time limits contained in the Federal Rules and give a license to litigants to ignore the time limits for discovery without any adverse consequences.'") (quoting *Krewson v. City of Quincy*, 120 F.R.D. 6, 7 (D. Mass. 1988)).[2]

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[2] *Accord Allen v. Sears, Roebuck & Co.*, No. 07-CV-11706, 2008 U.S. Dist. LEXIS 45048, at *4-5 (E.D. Mich. June 10, 2008) (Majzoub, Mag. J.) (citing *Carfagno* in enforcing waiver where Plaintiffs failed to file a timely privilege log as required by Fed. R. Civ. P. 26(b)(5)(A) and failed to demonstrate prejudice from the waiver's enforcement); *Cozzens v. City of Lincoln Park*, No. 08-11778, 2009 U.S. Dist. LEXIS 4063, at *9 (E.D. Mich. Jan. 21, 2009) (plaintiffs waived privilege where they did not file a privilege log in response to defendant's motion to compel, did not provide information about the allegedly privileged documents at a hearing a month later, and did not file a motion for a protective order pursuant to Rule 26(c)); *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 356 (D. Md. 2008); *DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008) ("When faced with general objections, the applicability of which to specific document requests is not explained further, '[t]his Court will not raise objections for [the responding party],' but instead will 'overrule[] [the responding party's] objection[s] on those grounds.'") (quoting *Tequila Centinela, S.A. de C.V. v. Bacardi & Co., Ltd.*, 242 F.R.D. 1, 12 (D.D.C. 2007)); *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.,* 408 F.3d 1142, 1149 (9th Cir. 2005) (finding of waiver was not an abuse of discretion where privilege log was filed five months after the Rule

(footnote continued on next page)

As should be evident from the above, the Waiver Order is neither clearly erroneous nor contrary to law. Moreover, and as noted above, prior to filing its Rule 72 Objections, the PBGC also moved the Court to reconsider the Waiver Order under L.R. 7.1(h)(3), presenting to Magistrate Judge Majzoub the exact same arguments raised in the Rule 72 Objections. *See* Dkt. No. 232. On

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(footnote continued from previous page)
34(b) response); *GMC LLC v. Lewis Bros., L.L.C.*, 10-CV-00725S(F), 2012 U.S. Dist. LEXIS 107039, at *21 (W.D.N.Y. July 31, 2012) (privilege waived after failure to produce privilege log for 13 months); *Horace Mann Ins. Co. v. Nationwide Mut. Ins. Co.*, 238 F.R.D. 536, 538 (D. Conn. 2006) (holding that discovery responses that were twenty-two days late and did not contain a privilege log, waived the privilege claim); *Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 662 (D. Colo. 2000) ("[B]oilerplate objection" filed seventy-one days late that did not comply with Rule 26(b)(5) waived attorney-client privilege); *Smith v. Conway Org.*, 154 F.R.D. 73, 76 (S.D.N.Y. 1994) ("[F]our-month delay in responding to the Document Requests . . .. waived the protection of the attorney work-product rule."); *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 237-38 (W.D.N.Y. 1998) (discovery responses file 3.5 months late that did not comply with Rule 26(b)(5) waived asserted privileges); *Witmer v. Acument Global Techs., Inc.*, No. 2:08-cv-12795, 2010 U.S. Dist. LEXIS 100663, at *13-17 (E.D. Mich. Sept. 23, 2010) (granting motion to compel where defendants failed to file timely written objections and a privilege log and later filed privilege logs that were untimely, defective and conclusory); *Bowling v. Scott County*, No. 3:04-CV-554, 2006 U.S. Dist. LEXIS 56079, at *7-9 (E.D. Tenn. Aug. 10, 2006) (finding waiver of privilege where defendants failed to provide the court with a privilege log or sufficient information in any form to evaluate the applicability of privilege); *Sonnino v. Univ. of Kan. Hosp. Auth.*, 221 F.R.D. 661, 669 (D. Kan. 2004) ("'The applicability of the privilege turns on the adequacy and timeliness of the showing as well as on the nature of the document.'") (quoting *Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540, 542 (10th Cir. 1984)).

September 5, 2013, this Court denied the PBGC's motion for reconsideration, and in doing so, provided additional findings in support of the Waiver Order. Dkt. No. 237.

For all these reasons, as well as the reasons demonstrated in Plaintiffs' Opposition to the Rule 72 Objections (Dkt. No. 239), the Waiver Order was demonstrably correct, and the PBGC is unlikely to prevail on the merits.

B. THE PBGC WILL NOT SUFFER IRREPARABLE HARM IN THE ABSENCE OF A STAY

The PBGC also cannot demonstrate the second stay factor – irreparable harm in the absence of a stay. *Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004). In its stay papers, the PBGC simply asserts, without citing any authority, that "potential loss of its right to claim privilege" – through compliance with Judge Majzoub's order and disclosure of the withheld documents – "constitutes irreparable harm to PBGC." Dkt. No. 235 at 6. This argument is foreclosed by controlling Supreme Court authority, as well as recent Sixth Circuit case law.

In *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 109 (2009), the Supreme Court had before it a party who had been ordered to disclose purportedly privileged documents and sought an immediate interlocutory appeal, arguing that the right to maintain attorney-client confidences -- the *sine qua non* of a

meaningful attorney-client relationship -- is "'irreparably destroyed absent immediate appeal" of adverse privilege rulings.'" *Id.* at 108 (citation omitted). The Supreme Court rejected the argument, finding that:

> [P]ostjudgment appeals generally suffice to protect the rights of litigants and ensure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence.

Mohawk Indus. Inc. 558 U.S. at 109.

The Supreme Court has thus rejected the foundation on which the PBGC's irreparable harm argument rests – that immediate disclosure would leave the PBGC with "potential loss of its right to claim privilege." Not surprisingly, relying on Mohawk, the Sixth Circuit has done likewise. In *Holt-Orsted v. City of Dickson*, 641 F.3d 230, 240 (6th Cir. 2011), the trial court ordered a party's former counsel to testify in a deposition, rejecting the party's claim of attorney-client privilege. The Plaintiffs in *Holt-Orsted*, like the PBGC here, asserted irreparable injury from such a ruling because it forced them potentially to waive privilege if not immediately reviewed and overturned. But the Court of Appeals rejected this argument, concluding that Plaintiffs would have a remedy even if they disclosed the purportedly privileged information now, since they "ultimately can avail

themselves of a post-judgment appeal which, under *Mohawk*, suffices 'to protect the rights of the litigants and preserve the vitality of the attorney-client privilege.'" *Id.* at 240 (quoting *Mohawk*, 558 U.S. at 103).[3]

These authorities demonstrate that irreparable harm will not occur in the absence of a stay. While the PBGC has attempted to distinguish these cases by focusing on the posture of the specific appeals, these distinctions are meaningless and ignore the holding underlying each of cases, that, where, as here, a reviewing court can later remedy the improper disclosure of privileged material, there cannot be a showing of irreparable harm. *See, e.g.*, *Mohawk Indus. Inc.* 558 U.S. at 109.

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[3] In holding that any harm from an order to disclose purportedly privileged materials can be fully remedied through pursuit of a successful appeal after disclosure, the Supreme Court expressly rejected decisions like *United States v. Philip Morris Inc.*, 314 F.3d 612, 617-21 (D.C. Cir. 2003), and *Kelly v. Ford (In re Ford Motor Co.)*, 110 F.3d 954, 957-64 (3d Cir. 1997). *Mohawk*, 558 U.S. at 105 n.1. Those lower court decisions had erroneously held that such disclosure orders create unique and irreparable harms that can only be remedied through an immediate appeal. Relying on *Philip Morris* and *In Re Ford Motor Co.*, the Sixth Circuit ruled, in an unpublished decision pre-dating *Mohawk*, that an order requiring disclosure of privileged materials creates irreparable harm. *See In re Lott*, 139 F. App'x 658, 662 (6th Cir. 2005). But *Mohawk's* holding that such harms are in fact reparable (through an appeal from a final judgment) clearly supersedes and overrules decisions like *Lott*, as the Sixth Circuit's later decision in *Holt-Orstead* makes clear. *See Holt-Orsted*,641 F.3d at 238 (noting that "the *Mohawk* decision has altered the legal landscape related to collateral appeals of discovery orders adverse to the attorney-client privilege and narrowed the category of cases that qualify for interlocutory review").

This essential factor is thus lacking from the PBGC's Stay Motion, which alone is reason to deny a stay.

C. PLAINTIFFS HAVE SUFFERED A SUBSTANTIAL INJURY AS A RESULT OF THE PARTIAL STAY, AND WILL CONTINUE TO SUFFER THIS INJURY UNTIL THE PARTIAL STAY IS DISSOLVED AND THE WAIVER ORDER IS ENFORCED

As discussed above, the third factor – injury to other parties as a result of entry of a stay – strongly cuts against injunctive relief. *See* Argument I, *supra*.

D. THE PUBLIC INTEREST WILL BE FURTHERED BY REQUIRING IMMEDIATE DISCLOSURE AND MOVING THIS LITIGATION FORWARD

The public interest will also be furthered by allowing this litigation to move forward. As noted above, the action in question has been pending for over four years, prolonged largely as a result of the government's continued refusal to cooperate with the Court's discovery orders. Such lengthy delays do a grave disservice to the public interest, which has a significant interest in the "prompt and efficient administration of justice." *Freeman v. City of Detroit*, No. 09-CV-13184, 2011 U.S. Dist. LEXIS 68914, at *7 (E.D. Mich. June 24, 2011). Similarly, the public also has an interest in the enforcement of the Federal Rules of Civil Procedure. Because the Waiver Order is a just enforcement of the Federal Rules,

and because the administration of this litigation cannot proceed while the Partial Stay is in place, the public interest favors dissolving the Partial Stay.

CONCLUSION

The Court should dissolve the Partial Stay and order the PBGC to comply with the Waiver Order within thirty (30) days.

Dated: February 5, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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