UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL KREPS, et al.,

Plaintiffs,

v

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, et al.,

Defendants.

No. 2:22-cv-12020

HON. MARK A. GOLDSMITH

DEFENDANTS' JOINT REPLY BRIEF REGARDING THEIR MOTION FOR SUMMARY JUDGMENT

David M. Blanchard (P67190)
Attorney for Plaintiffs
221 N. Main Street, Ste. 300
Ann Arbor, MI 48104
(734) 929-4313

Edward Macey (P72939)
Attorney for Plaintiff UAW
8000 E. Jefferson Ave
Detroit, MI 48214
(313) 926-5616

Shannon W. Husband (P60352)
Debbie Taylor (P59382)
John Gehring (P74869)
Assistant Attorneys General
Attorneys for Defendants
Department of Attorney General – Labor Division
3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202
(313) 456-2200

/

DEFENDANTS' JOINT REPLY BRIEF REGARDING THEIR MOTION FOR SUMMARY DISPOSITION

TABLE OF CONTENTS

Page

Index of Authorities ii

Introduction 1

I. This Court should dismiss any claims or causes of action based on PUA benefits or the CARES Act. 1

A. There is no cause of action under the CARES Act for PUA benefits. 1

B. Law of the case. 2

II. Because there is not cause of action for PUA benefits, Defendants are entitled to qualified immunity. 4

III. Respondeat superior requires that this Court dismiss Defendants Berry, Burns, and Dale. 4

IV. Any allegations that Plaintiffs make regarding the individual Plaintiffs unemployment files should be barred if they have not been specifically alleged in Plaintiffs' second amended complaint. 5

V. Plaintiff UAW has not substantially complied with the Zynda settlement agreement. 6

Conclusion and Relief Requested 7

Certificate of Service 8

INDEX OF AUTHORITIES

Page

Cases

Arizona v. California,
460 U.S. 605 (1983) 2

Hanover Ins. Co. v. Am. Eng'g Co.,
105 F.3d 306 (6th Cir. 1997) 3

Harlow v. Fitzgerald,
457 U.S. 800 (1982) 4

Jones v. Lewis,
957 F.2d 260 (6th Cir. 1992) 3

McKenzie v. BellSouth Telecomms., Inc.,
219 F.3d 508 (6th Cir. 2000) 3

Medical Center at Elizabeth Place, LLC v. Atrium Health System,
922 F.3d 713 (6th Cir. 2019) 3

Miller v. Maddox,
866 F.3d 386 (6th Cir. 2017) 3

Petition of U.S. Steel Corp.,
479 F.2d 489 (6th Cir. 1973) 3

Rosales-Garcia v. Holland,
322 F.3d 386, 398 n.11 (6th Cir. 2003) 3

Samons v. National Mines Corp.,
25 F.4th 455 (6th Cir. 2022) 2

Scott v. Churchill,
377 F.3d 565 (6th Cir. 2004) 2

Skinner v. Govorchin,
463 F.3d 518 (6th Cir. 2006) 4

INTRODUCTION

Here, five of the nine Plaintiffs' unemployment claims were solely PUA claims. Plaintiffs have failed to cite a single case to establish that the CARES Act provided a private cause of action or that PUA benefits are "property" to be protected by the Fourteenth Amendment. As such, this Court should dismiss the causes of action to the extent that they rely upon their PUA claims. In addition, Defendants are entitled to dismissal pursuant to qualified immunity because PUA benefits are not a statutory or constitutional right and because Plaintiffs have failed to demonstrate sufficient personal involvement by the individual Defendants. Finally, Plaintiff UAW failed to comply with the notice requirement of the settlement agreement. Thus, their claim should be dismissed.

I. This Court should dismiss any claims or causes of action based on PUA benefits or the CARES Act.

A. There is no cause of action under the CARES Act for PUA benefits.

It appears that Plaintiffs argue that so long as Defendants treat PUA benefits as property, that is sufficient to establish their causes of action. *See* Plaintiffs' Response, Dkt. 129, Page.ID.5454–5458. This is not the case. First, Plaintiffs do not address any of the six district court cases relied upon by Defendants that have dismissed similar causes of action. (Dkt. 118, Page.ID.4103–4140.)

Second, Plaintiffs argue that because the State of Michigan signed an agreement with the federal government to administer the CARES Act, a due process interest was created. (Dkt. 129, Page.ID.5456–5455.) All states signed contracts with the federal government, including the states involved in the cases cited above. None of the courts determined that the contract, required by federal law (Pub. L. 116–136, § 2102(f)), created a due process interest in PUA benefits. As such, those claims and their related Plaintiffs should be dismissed.

B. Law of the case.

In addition, Plaintiffs argue that the "law of the case" doctrine prevents this Court from addressing whether PUA benefits are property or whether there is a cause of action of the CARES Act. (Dkt. 128, Page.ID.5437, 5450, 5469). This is incorrect. The law of the case doctrine does not prohibit review of these issues. Under the law of the case doctrine, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Scott v. Churchill*, 377 F.3d 565, 569–70 (6th Cir. 2004) (quoting *Arizona v. California*, 460 U.S. 605, 618, (1983)). This is a discretionary, not mandatory, doctrine. *Samons v. National Mines Corp*., 25 F.4th 455, 463 (6th Cir. 2022).

The Sixth Circuit has held that its prior "holding on a motion to dismiss does not establish the law of the case for purposes of summary judgment, when the

complaint has been supplemented by discovery." *McKenzie v. BellSouth Telecomms., Inc.*, 219 F.3d 508, 513 (6th Cir. 2000). So this Court may consider issues not expressly or impliedly decided by the previous opinion. *McKenzie*, 219 F.3d at 513 (quoting *Jones v. Lewis*, 957 F.2d 260, 262 (6th Cir. 1992)). Given the prudential nature of the law of the case doctrine and the fact that this Court previously decided these issues under a standard more favorable to Plaintiffs, this Court should conclude that this doctrine does not bar it from revisiting these issues. *Miller v. Maddox*, 866 F.3d 386, 389–90 (6th Cir. 2017).

Furthermore, when applied horizontally — that is, to earlier decisions of the same court in the same case — the law of the case doctrine is prudential, not jurisdictional. *Medical Center at Elizabeth Place, LLC v. Atrium Health System*, 922 F.3d 713, 733–34 (6th Cir. 2019) (Sutton, J., concurring); *Rosales-Garcia v. Holland*, 322 F.3d 386, 398 n.11 (6th Cir. 2003). A court therefore retains the discretion to evaluate the discovery record at this stage of the litigation. *Id.*; *See also Hanover Ins. Co. v. Am. Eng'g Co.*, 105 F.3d 306, 312 (6th Cir. 1997) ("[T]his 'law of the case' doctrine is 'directed to a court's common sense' and is not an 'inexorable command.'") (quoting *Petition of U.S. Steel Corp.*, 479 F.2d 489, 493 (6th Cir. 1973)).

As such, upon review, PUA benefits and the CARES Act claims, along with the Plaintiffs, should be dismissed.

II. Because there is not cause of action for PUA benefits, Defendants are entitled to qualified immunity.

"Government officials performing discretionary functions are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Because PUA benefits are not property entitled to due process protection and because the CARES Act did not establish a private cause of action, Defendants are entitled to qualified immunity as to those claims because they did not violate a "clearly established statutory or constitutional right." *Harlow*, 457 U.S. at 818.

III. Respondeat superior requires that this Court dismiss Defendants Berry, Burns, and Dale.

Plaintiffs argue that the individuals Defendants are liable because they authorized, acquiesced in, or knew about alleged unconstitutional conduct. (Dkt. 129, Page.ID.5438, 5440, 5442–5443–5449.) Multiple times, Plaintiffs refer to Defendants collectively as "leadership." (*Id*., Page.ID.5438, 5444, 5445, 5446, 5447.) However, the individual Defendants' status as administrators with "knowledge" is insufficient to establish liability.

There is no respondeat superior liability on § 1983 claims. *Skinner v. Govorchin*, 463 F.3d 518, 525–526 (6th Cir. 2006). Mere knowledge of a constitutional violation is not enough. Despite thousands of pages of documents

and multiple Agency depositions, Plaintiffs have failed to establish liability. None of the Defendants directly supervised the departments responsible for the alleged conduct complied of. None were involved with any of the individual Plaintiffs' unemployment claims. As such, the individuals Defendants are not liable for the alleged unconstitutional conduct.

Finally, Plaintiffs devote a substantial amount of time addressing the multiple alleged reasons to stop, delay, or suspend payments (Dkt. 129, Page.ID.5437–5448) with little to no explanation as to how this activity occurred within the files of the individual Plaintiffs. Moreover, it should be noted that any allegations regarding what occurred regarding the individual Plaintiffs' claims are speculative because Plaintiffs failed to depose any Agency staff regarding actions taken on the individual Plaintiffs' files. Finally, Defendants have provided declarations explaining that any number of legitimate reasons may exist that delay or suspend unemployment payments and providing explanations regarding the specific Plaintiffs' unemployment files. (Dkt. 118, Page.ID.4340–4342; Dkt. 133, Page.ID.6002–6007, 6036–6038.)

IV. Any allegations that Plaintiffs make regarding the individual Plaintiffs unemployment files should be barred if they have not been specifically alleged in Plaintiffs' second amended complaint.

Plaintiffs make a number of new allegations regarding their unemployment files that they did not raise in their second amended complaint (Dkt. 36). Nor have

they moved for leave to file a third amended complaint. As such, these additional allegations should not be considered by this Court. These allegations include:

1) That Plaintiffs Kreps, Boudrie, and Quigg lost LWA payments (Dkt. 129, Page.ID.5459–5460, 5461, 5465) and

2) That Plaintiff Kreps lost his business, laid off employees, and pawned personnel possessions. (Dkt. 129, Page.ID.5460.)

V. Plaintiff UAW has not substantially complied with the Zynda settlement agreement.

Plaintiff UAW did not comply with the plain and clear notice provision of the settlement agreement regarding how it notified the Agency of alleged violations. (Dkt. 118, Page.ID.4399–4403.) Further, UAW's purported notices are vague, conclusory, and deficient. None of the notices ever identified a single individual UAW member whom the Agency's alleged *Zynda* violations affected. (Dkt. 118, Page.ID.4402–4403.) UAW admits that it did not send Defendant Agency a "sample" list of members allegedly affected by alleged violations until September 2024, or nearly two years after their first deficient notice and the filing of the second amended complaint. (Dkt. 118, Page.ID.4402–4403.) The purpose of "notice and opportunity to remedy" is to give the Agency a reasonable opportunity to resolve the matter prior to litigation. Instead, the UAW did not engage in good faith negotiations. It sent vague and overbroad notices and

apparently expected Defendant Agency to search for UAW members involved in an alleged *Zynda* violation. This conduct does not demonstrate substantial compliance and their complaint to the contrary should be dismissed.

CONCLUSION AND RELIEF REQUESTED

Defendants respectfully request that this Honorable Court enter an order dismissing this matter in its entirety and award any appropriate costs and fees.

Respectfully submitted,

/s/ Shannon W. Husband
Shannon W. Husband (P60352)
Debbie Taylor (P59382)
John Gehring (P74869)
Assistant Attorneys General
Attorneys for Defendants
Labor Division
3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202
(313) 456-2200
husbands1@michigan.gov
gehringj1@michigan.gov
taylord8@michigan.gov

Dated: December 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2024, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

Respectfully submitted,

/s/ Shannon W. Husband
Shannon W. Husband (P60352)
Assistant Attorney General
Attorney for Defendants
Labor Division
3030 W. Grand Blvd., Ste. 9-600
Detroit, MI 48202
(313) 456-2200
husbands1@michigan.gov

Dated: December 23, 2024