

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

Kimberly Pletcher	:	
Plaintiff,	:	
	:	
Vs.	:	No.: 2:20-cv-754-NBF
	:	
Giant Eagle, Inc.	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	:	

**PLAINTIFFS’ RESPONSE TO DEFENDANT’S MOTION TO
CONSOLIDATE**

Plaintiffs in the related actions submit this Response to Defendant Giant Eagle, Inc.’s (“Giant Eagle”) Motion to Consolidate Related Matters. Without question, this Honorable Court has broad discretion to consolidate cases and create the procedural road map the parties must follow in cases involving common questions of law or fact. Volkay v. Court of Common Pleas, 2015 U.S. Dist. LEXIS 109645 * 2, 2015 WL 4953143, Civ. Act. Nos. 12-193 and 15-706 (J. Fischer) (W.D. Pa. Aug. 19, 2015). However, “even where there are common questions of law or fact, a court should weigh the potential benefits of judicial economy against the potential for delays, expense, confusion or prejudice.” Id. (quotation omitted).

Plaintiffs agree that there are common questions of law and some common

questions of fact in these cases. Each of the complaints allege that Giant Eagle violated Title III of the Americans with Disabilities Act. However, the cases involve numerous Giant Eagle locations across Western Pennsylvania. Discovery will involve not only Giant Eagle's general mask policies, but it will undoubtedly involve communication, video, complaints, correspondence, etc., with each of the involved locations, locations in other states, and various police departments. Plaintiffs are concerned that if the cases are consolidated for pretrial motions and discovery they may be prejudiced by delay and limitations on discovery. Plaintiffs are also concerned about Giant Eagle's request that it should only be required to file one response to Plaintiffs' motions for preliminary injunction and that this Honorable Court only hold one hearing on the motions.

Several cases include causes of action for negligence and assault and battery in addition to the ADA violations. Each Plaintiff has also filed a complaint with the Pennsylvania Human Relations Commission ("PHRC") alleging violation of the Pennsylvania Human Relations Act ("PHRA"). If the cases are not resolved one year from the filing of the complaints with the PHRC, Plaintiffs expect to move to amend their complaints to include claims for compensatory damages, fees and costs, pursuant to the PHRA. It would be inappropriate to consolidate all cases for purposes of pretrial dispositive motions at this time.

Plaintiffs do not know at this point what defense(s) Giant Eagle intends to

assert in response to the pending motions for preliminary injunctions. The Motions involve actions taken in Ligonier and Oil City. Without knowing how Giant Eagle intends to respond to the pending motions, Plaintiffs cannot agree to consolidation. More importantly, Defendants want to delay responding to the pending motions for preliminary injunctions until any similar motion is filed.

Giant Eagle continues to turn disabled people away from its stores if they cannot wear masks. Undersigned counsel is contacted every day by customers who are being turned away and threatened by Giant Eagle employees across Western Pennsylvania. Plaintiffs Wynkoop and Kostek, who have been permanently barred from Giant Eagle stores within walking distance of their homes, should not have to wait any longer than necessary to have their motions ruled upon; their rights are being violated and they are being subjected to continued irreparable harm every day.

If this Honorable Court determines that judicial economy is best served by consolidation of the related cases, Plaintiffs object to the order proposed by Giant Eagle. Plaintiffs Wynkoop and Kostek would be prejudiced if they are required to wait any longer for an adjudication of their motions for preliminary injunctions. Giant Eagle will not be overly burdened by having to respond to the pending motions in accordance with the current briefing schedules. Plaintiffs should not have to file additional motions for preliminary injunction by a date certain because

Giant Eagle continues to engage in the conduct upon which the current cases are based. Plaintiffs Wynkoop's and Kostek's rights to preliminary injunctive relief should not be ignored or shelved until some future date so that Giant Eagle can file one response to all motions, including motions that could potentially be filed in cases that are not even filed as of this date.

Plaintiffs respectfully request that this Honorable Court either deny Defendant's motion or alternatively, issue an order that only consolidates the related cases and any additional related cases for purposed of discovery, without limiting the discovery the Plaintiffs may conduct.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

Dated June 12, 2020

/s/ Thomas B. Anderson
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