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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY

AMELIA MARQUEZ, AN INDIVIDUAL;  
AND JOHN DOE, AN INDIVIDUAL,

Plaintiffs,

vs.

STATE OF MONTANA, ET AL.,

Defendants.

Cause No.: DV 21-873

Judge Michael G. Moses

**ORDER DENYING PLAINTIFFS'  
MOTION FOR LEAVE TO FILE SECOND  
AMENDED COMPLAINT**

This matter comes before the Court on the Motion for Leave to File Second Amended Complaint. (Dkt. 82). The defendants object. (Dkt. 91).

Amendments to pleadings beyond the twenty-one-day threshold in M.R.Civ.P. 15(a)(1) require written consent of the opposing party or leave of court, which should be freely given "when justice so requires." M.R.Civ.P. 15(a)(2). M.R.Civ.P. 15(a) favors leave to amend, grounds to deny such leave include "undue delay, bad faith or

1 dilatory motive on the movant's part...repeat failure to cure deficiencies by  
2 amendments previously allowed, undue prejudice to the opposing party by allowance  
3 of the amendment, futility of the amendment, etc." *Seamster v. Musselshell County*  
4 *Sheriff's Office*, 2014 MT 84, ¶ 14, 374 Mont. 358, 321 P.3d 829.

5 The proposed Second Amended Complaint is found at Dkt. 84. (hereafter  
6 "proposed SAC."). Plaintiffs cite *Hobble-Diamond Cattle Co. v. Triangle Irrigation Co.*  
7 (1991), 249 Mont. 322, 325, 815 P.2d 1153, 1155 for the proposition that Montana Courts  
8 "interpret ... Rule 15 liberally, allowing amendment of pleadings as the general rule  
9 and denying leave to amend as the exception." Plaintiff states that the Second  
10 Amended Complaint easily meets the liberal standard because: "(1) amending the  
11 complaint is necessary to address Defendants' post-injunction misconduct, (2)  
12 amending the complaint to assert class allegations will provide an effective statewide  
13 remedy for Defendants' conduct, (3) the Court is already familiar with the facts and  
14 claims alleged in the Second Amended Complaint, and (4) the proposed amendment  
15 will not cause any prejudice to Defendants." (Dkt. 83, pages 8 and 9).

16 The Defendants oppose the amendment. (Dkt. 91). Defendants cite numerous  
17 cases in support of the reasons why a court should deny leave to amend. *See Peuse v.*  
18 *Malkuch*, 275 Mont. 221, 911 P.2d 1153 (1996); *Stundal v. Stundal*, 2000 MT 21, 298 Mont.  
19 141, 995 P.2d 420; *Bardsley v. Pluger*, 2015 MT 301, 381 Mont. 284, 358 P.3d 907; *Smith v.*

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1 *Butte-Silver Bow Cnty.*, 266 Mont. 1, 878 P.2d 870 (1994); *Farmers Coop. Ass'n v. Amsden*,  
2 *LLC*, 2007 MT 286, 339 Mont. 445, 171 P.3d 690; and *Foman v. Davis*, 371 U.S. 178 (1962).

3 The Montana Supreme Court, on January 10, 2023, issued its Order in OP 22-  
4 0552. In the Writ of Supervisory Control filed by defendants directly related to this  
5 case, the court provided some direction. All parties have copies of this decision. The  
6 Supreme Court addressed separately two issues: "(1) whether the District Court  
7 ordered DPHHS to reinstate the 2017 Rule in the Preliminary Injunction Order and (2)  
8 whether DPHHS could undertake new rule making." (See Order OP 22-0552, pages 5  
9 and 6).

10 The answer to the first issue was crystal clear: "In enjoining SB 280, and thereby  
11 maintaining the status quo on 'last, actual peaceable, non-contested condition which  
12 preceded the pending controversy,' the District Court unquestionably reinstated the  
13 2017 Rule for so long as its preliminary injunction remains in effect." (*Supra*, page 6).

14 As to the second issue, the court stated, without further direction, "thus the  
15 authority to conduct this review was never given to the District Court." In other  
16 simpler terms, this court did not have jurisdiction. The Supreme Court made some  
17 suggestions about how one goes about obtaining jurisdiction over DPHHS concerning  
18 their emergency Rule and subsequent September 2022 Rule, which is contrary to this  
19 Court's injunction. (*Supra*, page 6). Defendants also have remedies available to them  
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1 to address these post injunction issues. Much of the evidence and most of the  
2 witnesses are in Helena.

3 The Second Amended Complaint proposed to add new challenges to DPHHS  
4 actions after this Court's Order on the preliminary injunction. Many of the issues, as  
5 outlined by the Supreme Court, could have, and perhaps should have been initiated  
6 during the rule making process. They are distinct new causes of actions, that only  
7 arose after this Court's order, and unrelated to SB 280 and the rules promulgated  
8 pursuant to SB 280.

9 This court finds that the SAC would indeed cause undue delay. It would add  
10 numerous new legal theories, facts, and actions of DPHHS to include administrative  
11 procedures and issues not presently before this court. These all occurred after this  
12 Court's Preliminary Injunction Order and would add time, energy, and money to the  
13 present posture of this case as pled in the First Amended Complaint.

14 The general rule of Rule 15 is the liberal allowance of amendments. This case  
15 presents clear exceptions to the general rule. Thus, Plaintiffs' Motion for Leave to File  
16 the Second Amended Complaint is DENIED.

17 DATED March 2, 2023

/s/ Michael G. Moses  
District Court Judge

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19 cc: Elizabeth Halverson  
Alexander Rate  
20 Akilah Lane  
Jon Davidson

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