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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 David Isabel,
10 Plaintiff,

11 v.

12 Michele Reagan, et al.,
13 Defendants.
14

No. CV-18-03217-PHX-DWL

ORDER

15 Pending before the Court are Plaintiff's "Brief Regarding Rule 26(f) Discovery
16 Dispute" (Doc. 40) and Defendant Reagan's Response (Doc. 41). In a nutshell, Plaintiff
17 contends that he has attempted to meet and confer with Defendants for the purpose of
18 preparing a joint Rule 26(f) report but Defendants have refused to engage in any meet-and-
19 confer efforts. (Doc. 40 at 1-2.) Plaintiff further argues that (1) although Defendants have
20 filed motions to dismiss, pending motions don't automatically result in a stay of the case,
21 and (2) by refusing to meet and confer, Defendants violated an earlier order in this case,
22 which specifically provided that "[o]utstanding motions . . . will not excuse the requirement
23 to hold a Rule 26(f) conference or submit the joint filing." (*Id.* at 2.)

24 As explained below, although the Court is sympathetic to Plaintiff's desire to litigate
25 this case expeditiously and appreciates Plaintiff's diligence in attempting to comply with
26 the federal rules, the requested relief will be denied. As background, Rule 26(f) provides,
27 in relevant part, that "[e]xcept . . . when the court orders otherwise, the parties must confer
28 as soon as practicable—and in any event at least 21 days before a scheduling conference is

1 to be held or a scheduling order is due under Rule 16(b).” Rule 16(b) provides, in relevant
2 part, that the district judge “must issue [a] scheduling order as soon as practicable, but
3 unless the judge finds good cause for delay, the judge must issue it within the earlier of 90
4 days after any defendant has been served with the complaint or 60 days after any defendant
5 has appeared.”

6 Here, all Defendants were served on November 2, 2018. The ninetieth day after
7 that date is January 31, 2019. Also, Defendant Reagan filed a notice of appearance on
8 November 5, 2018. The sixtieth day after that date is January 2, 2019. Thus, the parties
9 were required to confer at least 21 days before January 2, 2019—that is, by December 12,
10 2018.

11 Nevertheless, these deadlines can be extended for “good cause,” and courts have
12 concluded that the existence of a pending motion to dismiss can qualify as good cause.
13 *Jones v. iPawn Rodney Parham, LLC*, 2017 WL 6945575, *2 (E.D. Ark. 2017) (“At this
14 juncture in the litigation, defendants have been served, but no defendant filed an answer.
15 Instead, defendants filed a motion to dismiss. The Court found that to be good cause to
16 hold the issuance of an initial scheduling order.”). Here, Defendants filed motions to
17 dismiss on November 27 and 30, 2018. (Docs. 32, 33.)¹ Both motions recently became
18 fully briefed and will be ruled upon in due course. The Court concludes the existence of
19 these pending motions constitutes good cause to delay the issuance of the scheduling order
20 and the Rule 26(f) process. Additionally, Defendants have also filed a motion to deem this
21 a “related case” and transfer it to a different judge. (Doc. 20.) The existence of that motion,

22 ¹ The Court further notes that Defendants’ obligation to provide disclosures under the
23 District of Arizona’s Mandatory Initial Discovery Pilot Project (“MIDP”) has not yet
24 arisen. Under the MIDP, these disclosure obligations arise once the defendant has filed an
25 answer. (Doc. 31 at 5.) Here, Defendants haven’t answered yet. Nor are their answers
26 overdue. This is because they filed their motions to dismiss (Docs. 32, 33) before the
27 deadline to file their answers (Doc. 24) expired. Although a previous iteration of MIDP
28 order stated that “Parties must file answers, counterclaims, crossclaims, and replies within
the time set forth in Rule 12(a)(1)-(3) *even if they have filed or intend to file a motion to
dismiss or other preliminary motion*” (Doc. 4 at 5, emphasis added), the current version of
the MIDP order—which was issued on November 1, 2018—doesn’t include this italicized
language. Now, the order provides that “Parties must file answers, counterclaims,
crossclaims, and replies within the time set forth in Rule 12(a).” (Doc. 31 at 5.) And under
Rule 12(a)(4), “[a] motion to dismiss . . . that is filed within the time to answer . . . suspends
the time to answer.” *Kerr v. U.S. Bank, N.A.*, 2017 WL 1393041, *2 (D. Nev. 2017).

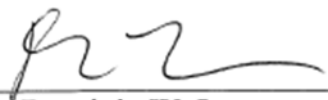
1 which is currently pending before the proposed transferee judge, provides further good
2 cause to delay the Rule 16 and Rule 26 deadlines.

3 Finally, Plaintiff is incorrect in his assertion that “Defendants[’] refusal to engage
4 in a Rule 26(f) conference . . . violates an order from this Court.” (Doc. 40 at 2.) In support
5 of this claim, Plaintiff cites the Court’s standard preliminary order, which provides that
6 “[o]utstanding motions or requests to continue the conference will not excuse the
7 requirement to hold a Rule 26(f) meeting or submit the joint filing.” (Doc. 29 at 2.) The
8 cited language, however, appears in a paragraph setting forth the parties’ obligations *after*
9 the Court schedules the Rule 16 case management conference. The Court hasn’t set a date
10 for the Rule 16 conference yet (because Defendants haven’t answered), so the parties’
11 obligations under that particular paragraph haven’t arisen.

12 Therefore,

13 **IT IS ORDERED** denying Plaintiff’s request (Doc. 40) for a telephonic conference
14 with the Court regarding Defendants’ refusal to participate in a Rule 26(f) conference.

15 Dated this 7th day of February, 2019.

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20 Dominic W. Lanza
21 United States District Judge
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