

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Magistrate Judge Kathleen M. Tafoya**

Civil Action No. 17-cv-02493-RM-KMT

UMAR FAROUK ABDULMUTALLAB,

Plaintiff,

v.

JEFFERSON SESSIONS, Attorney General of the United States, in his official capacity,  
FEDERAL BUREAU OF PRISONS,  
JOHN DOES 1 THROUGH 20, in their official capacities,

Defendants.

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**ORDER**

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This matter is before the court on the “Motion to Stay Discovery . . . Pending Resolution of Dispositive Motions” (Doc. No. 20, filed January 1, 2018). Plaintiff filed his response on January 24, 2018 (Doc. No. 26), and Defendants filed their reply on January 25, 2018 (Doc. No. 29).

In his Complaint (Doc. No. 1), Plaintiff asserts various constitutional claims challenging the conditions of his confinement at the United States Penitentiary – Administrative Maximum in Florence, Colorado. Defendants, since filing the present Motion to Stay, filed a Motion to Dismiss Plaintiff’s procedural due process claim (Claim 1), his free speech and substantive due process claims (Claims 2-5), and his claims regarding actions the defendants allegedly took during Plaintiff’s hunger strikes (Claims 6-7 and 11-13) for failure to state a claim upon which relief can be granted. (*See* Doc. No. 38 at 7-20; 23-30.) Defendants also move to dismiss

Plaintiff's claims regarding his hunger strikes for lack of subject matter jurisdiction. (*Id.* at 20-23.) Defendants also filed a Motion for Partial Summary Judgment on Plaintiff's Claims 1, 6, 8-10, and 12, as well as portions of Claims 2-5, 7, 11, and 13 for Plaintiff's failure to exhaust his administrative remedies. (*See* Doc. No. 39.) Defendants move for a stay of all discovery in this matter until ruling on their Motion to Dismiss and Motion for Partial Summary Judgment.

The Federal Rules of Civil Procedure do not expressly provide for a stay of proceedings. *See String Cheese Incident, LLC v. Stylus Shows, Inc.*, 02-CV-01934-LTB-PA, 2006 WL 894955, at \*2 (D. Colo. March 30, 2006) (unpublished). Federal Rule of Civil Procedure 26 does, however, provide that

[a] party or any person from whom discovery is sought may move for a protective order in the court where the action is pending . . . . The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .

Fed. R. Civ. P. 26(c). Moreover,

[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

*Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (citing *Kansas City S. Ry. Co. v. United States*, 282 U.S. 760, 763 (1931)). An order staying discovery is thus an appropriate exercise of this court's discretion. *Id.*

Although the stay of proceedings in a case is generally disfavored, the court has discretion to stay discovery while a dispositive motion is pending. *Wason Ranch Corp. v. Hecla Mining Co.*, No. 07-cv-00267-EWN-MEH, 2007 WL 1655362, at \*1 (D. Colo. June 6, 2007)

“A stay of all discovery is generally disfavored in this District.” (citation omitted)). *See also Gilbert v. Ferry*, 401 F.3d 411, 415–16 (6th Cir.2005) (finding that ordering a stay of discovery is not an abuse of discretion when a defendant has filed a motion to dismiss challenging the court’s actual subject matter jurisdiction); *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999) (“When a particular issue may be dispositive, the court may stay discovery concerning other issues until the critical issue is resolved.”); *String Cheese Incident, LLC v. Stylus Shows, Inc.*, No. 02–cv–01 934–LTB–PAC, 2006 WL 894955, at \*2 (D. Colo. Mar. 30, 2006) (finding that a thirty day stay of discovery was appropriate when a motion to dismiss for lack of personal jurisdiction was pending); *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2005) (“A stay of discovery pending the determination of a dispositive motion is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources.” (internal quotation omitted)); *Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla. 2003) (A stay may be appropriate if “resolution of a preliminary motion may dispose of the entire action.”).

When considering a stay of discovery, this court considers: (1) the plaintiff’s interests in proceeding expeditiously with the civil action and the potential prejudice to plaintiff of a delay; (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest. *See String Cheese Incident*, 2006 WL 894955, at \*2 (citing *FDIC v. Renda*, No. 85-2216-O, 1987 WL 348635, at \*2 (D. Kan. 1987)).

First, the court recognizes that the plaintiff has an interest in proceeding in an expeditious manner. However, Plaintiff has failed to provide any “specific examples of how [his] ability to conduct discovery might be adversely affected by a stay.” *Stone v. Vail Resorts Dev. Co.*, Civil Action No. 09-cv-02081-WYD-KLM, 2010 WL 148278, at \*1 (D. Colo. Jan. 7, 2010). As such, the court finds that Plaintiff’s general interest in proceeding expeditiously does not overcome other factors that weigh in favor of a stay.

Second, the court agrees with Defendants that proceeding with discovery may be wasteful, and thus may be a burden to Defendants, if the Motion to Dismiss and Motion for Partial Summary Judgment are granted. *See Chavous*, 201 F.R.D. at 2. *See also String Cheese Incident*, 2006 WL 894955, at \*2.

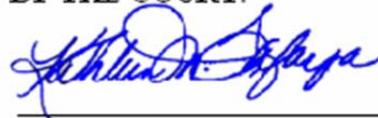
Third, although the court has an interest in managing its docket by seeing the case proceed expeditiously, the court finds that any inconvenience that might result from rescheduling the docket is outweighed by the potential waste of judicial resources that would result from allowing discovery to proceed only to have a large portion of the case subsequently dismissed on the grounds raised in the motions to dismiss. *Davidson v. Bank of America N.A.*, No. 14-cv-01578-CMA-KMT, 2015 WL 5444308, at \*2 (D. Colo. Sept. 16, 2015) (“[I]t is more convenient for the court to stay discovery until it is clear that the case will proceed.”). *See Chavous*, 201 F.R.D. at 5 (concluding that stay discovery pending a decision on a dispositive motion that may resolve the case “furthers the ends of economy and efficiency, since if either [parties’] dispositive motion is granted, there will be no need for discovery”).

Finally, neither the interest of nonparties nor the public interest in general prompts the court to reach a different result. Accordingly, on balance, the court finds that a stay of discovery is appropriate in this case. Therefore, it is

**ORDERED** that the “Motion to Stay Discovery . . . Pending Resolution of Dispositive Motions” (Doc. No. 20) is **GRANTED**. All discovery in this action is **STAYED** pending ruling on the Motion to Dismiss and Motion for Partial Summary Judgment.

Dated this 8<sup>th</sup> day of February, 2018.

BY THE COURT:



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Kathleen M Tafoya  
United States Magistrate Judge