

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**STATE OF NEW MEXICO ex rel KENNETH GOMEZ,**

Plaintiff,

vs.

**No. CIV 10-00594 JP/LFG**

**ELEVENTH JUDICIAL DISTRICT COURT,**

Defendant.

**DEFENDANT’S RESPONSE TO OBJECTION TO THE  
PREJUDICIAL ORDER ENTERED, THE UNTRUSTWORTHINESS OF  
ASSIGNED JUDGES, AND THE ERRONEOUS CAPTION OF CASE [Docket No. 18]**

Defendant, Eleventh Judicial District Court, through its attorneys Robles, Rael & Anaya, P.C. (Luis Robles, Esq.) and pursuant to Fed.R.Civ.P. 26(c)(1), states the following for its Response to Objection to the Prejudicial Order Entered, the Untrustworthiness of Assigned Judges, and the Erroneous Caption of Case [*Docket No. 18*]:

**INTRODUCTION**

Rule 26 of the Federal Rules of Civil Procedure governs the issuance of protective orders and authorizes this Court to enter a protective order to protect a party “from annoyance, embarrassment, oppression, or undue burden or expense,” including an order forbidding discovery or specifying terms for discovery. Fed. R. Civ. P. 26(c)(1). While the decision to enter a protective order is within the Court’s discretion, Thomas v. International Business Machine, 48 F.3d 478, 482 (10<sup>th</sup> Cir. 1995), the Supreme Court has instructed that “judges should not hesitate to exercise appropriate control over the discovery process.” Herbert v. Lando, 441 U.S. 153, 177 (1979).

Thus, “federal district courts have discretion to impose a stay of discovery pending the determination of dispositive motions by the issuance of a protective order.” Hachette Distrib., Inc. v. Hudson County News Co., 136 F.R.D. 356, 358 (E.D.N.Y.1991); Panola Land Buyers Ass’n v. Shuman, 762 F.2d 1550, 1558-59 (11<sup>th</sup> Cir. 1985) (court has “broad discretion to stay discovery until the district court rules on a pending dispositive motion”); Transunion Corp. v. PepsiCo, Inc., 811 F.2d 127, 130 (2<sup>nd</sup> Cir. 1987). In fact, the circuit courts routinely hold that where a pending dispositive motion raises purely legal issues, it is appropriate to stay discovery. See, e.g., Diaz v. Paul J. Kennedy Law Firm, 289 F.3d 671, 674 (10<sup>th</sup> Cir. 2002) (no abuse of discretion in district court ruling to stay discovery pending resolution of motion for summary judgment).

On July 7, 2010, this Court entered an Order Assigning to Administrative Track, which states the following:

THIS MATTER is before the Court sua sponte. Based on the Court’s initial review of Kenneth Gomez’s pro se Complaint, it determines that this case should be temporarily assigned to the “Administrative” case management track. Cases may be assigned to this track when it appears that some or all of the claims are subject to resolution by motion. Discovery is not permitted on Administrative track cases unless specifically authorized by the Court.

Defendants filed a motion to dismiss and a motion for partial summary judgment. Thus, initial disclosures under Fed. R. Civ. P. 26 and the Fed. R. Civ. P. 16 scheduling conference will be stayed pending the Court’s consideration and disposition of these potentially dispositive motions.

See [Docket No. 17, p. 1].

On July 8, 2010, Plaintiff, Kenneth Gomez (“Gomez”) filed the instant objection to this Court’s order. See [Docket No. 18]. Focusing on the essence of his objection, Gomez argued the following:

The Court issued an order, Doc. No. 17, recognizing Defendant District Court's pleadings, Docs. No. 11 and 14 and purposefully ignoring Plaintiffs' verified pleadings opposing removal, Doc. No. 10, and Motion Memorandum to Strike Defendant District Court's Answer, for violations of Court Rules. Accordingly, the Court proposes to deny discovery practice so as to cover-up Plaintiffs' reported active criminal insurgency engaged in by State citizens posing as state public officers illegally drawing publicly appropriated funds from the State Treasury joined by persons holding federal commissions under false pretenses in the District of New Mexico, Exhibit 4.

*See [Docket No. 18, p. 2].*

If this Court granted Defendant's pending dispositive motions, however, it would dispose of the entire action. More importantly, because this case was very recently filed and no scheduling order has been entered, Plaintiff, Kenneth Gomez ("Gomez"), will not suffer prejudice by a stay of discovery. This temporary stay is not being requested for purposes of delay, but rather solely for the purpose of conserving the parties' resources while awaiting the Court's ruling on Defendant's dispositive motion. In these circumstances, a stay of discovery is warranted and appropriate.

#### **STATEMENT OF THE RELEVANT FACTS**

1. On June 21, 2010, Defendant removed Gomez' complaint to the United States District Court. *See [Docket No. 1].*

2. On July 1, 2010, Defendant filed its Motion to Dismiss No. I: Dismissal of Gomez's Fourteenth Amendment Equal Protection and Procedural and Substantive Due Process Claims. *See [Docket No. 11].* In its motion, Defendant makes the following argument:

Even accepting all of Gomez' allegations as true for purposes of this Motion, Defendant is entitled to the dismissal of Gomez' Fourteenth Amendment procedural due process and equal protection claims. In the alternative, this Court should dismiss Gomez' Fourteenth Amendment claims because Defendant, Eleventh Judicial District Court, is not considered a "person" under 42 U.S.C. § 1983. The dismissal

of Gomez' Fourteenth Amendment equal protection claim is proper because he failed to allege that Eleventh Judicial District Court judges treated him differently than similarly situated litigants who are before the court.

As a matter of law, Gomez' alleged loss of his "good reputations" fails to state an actionable Fourteenth Amendment claim under Paul v. Davis, 424 U.S. 985 (1976). The clearly established case law does not support Gomez' claim that Eleventh Judicial District Court judges' alleged intentional, though random and unauthorized, deprivation of Gomez' property (reputation) violated his Fourteenth Amendment procedural due process rights. For these reasons, this Court should dismiss Gomez' Fourteenth Amendment procedural due process and equal protection claims with prejudice.

*See [Docket No. 11, pp. 1-2].*

3. On July 5, 2010, Defendant filed its Motion for Partial Summary Judgment No. I: Dismissal of Plaintiff's Quo Warranto Action and Claims Brought under 42 U.S.C. §§ 1983, 1985, and 1986. *See [Docket No. 14].* In its motion, Defendant makes the following argument:

Even when the evidence is viewed in the light most favorable to him, this Court should dismiss Gomez's Quo Warranto action and claims brought under 42 U.S.C. §§ 1983, 1985, and 1986 as a matter of law. With a state district court having previously dismissed Gomez's Quo Warranto action on the merits, the doctrine of collateral estoppel prevents Gomez from relitigating the issue in this case. Having failed to plead an actionable constitutional claim against defendant, Gomez's section 1983 conspiracy claim is subject to dismissal because such a claim is not viable without an underlying, cognizable constitutional right violation. Even accepting all of his allegations as true, Gomez's claim that Defendant conspired to deprive him of his federally protected rights fails to state an actionable claim under 42 U.S.C. § 1985. Since he failed to state actionable claims under 42 U.S.C. § 1985(1), (2) and (3), Gomez's 42 U.S.C. § 1986 claim also fails to state an actionable claim because section 1986 claims are derivative of section 1985 claims. For these reasons, this Court should dismiss Gomez's Quo Warranto action and claims brought under 42 U.S.C. §§ 1983, 1985, and 1986 as a matter of law.

*See [Docket No. 14, pp. 1-2].*

3. On July 7, 2010, this Court entered an Order Assigning to Administrative Track. See [Docket No. 17, p. 1].

### LEGAL ARGUMENT

The Federal Rules of Civil Procedure authorize this Court to stay discovery pending a decision on Defendant's dispositive motions. In this case, staying discovery pending a decision on Defendant's motions is proper because the motions are well-taken and will conserve the federal court's judicial resources. For these reasons, this Court should overrule Gomez' objection to this Court's Order Assigning Administrative Track. Orchid Biosciences, Inc. v. St. Louis Univ., 198 F.R.D. 670, 675 (S.D.Cal. 2001) (courts may stay discovery on non-jurisdictional matters when a defendant raises jurisdictional questions).

#### **I. THE FEDERAL RULES OF CIVIL PROCEDURE AUTHORIZE THIS COURT TO STAY DISCOVERY PENDING A DECISION ON DEFENDANT'S DISPOSITIVE MOTIONS.**

Federal Rules of Civil Procedure 26(b)(2) & (c) empower this Court with the discretion to stay discovery pending its ruling on Defendant's dispositive motions. Fed.R.Civ.P. 26(b)(2) & (c). Federal Rule of Civil Procedure 26(b)(2) allows this Court to enter an order limiting discovery if it determines that:

the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Fed.R.Civ.P. 26(b)(2)(iii). This Court's power to limit discovery is additionally outlined in Fed.R.Civ.P. 26(c) which provides that upon motion and for good cause shown, this Court may enter

an order that “the disclosure or discovery not be had.” Fed.R.Civ.P. 26(c)(1). Moreover, courts and commentators agree that Fed.R.Civ.P. 26(b) & (c) give trial courts the discretion to stay discovery pending the ruling on a motion raising dispositive legal issues. See generally, 4 J. Moore, J. Lucas & G. Grotheer, Moore’s Federal Practice ¶ 26.69 at 26-366-67, ¶ 26.70 26-378 (2d ed. 1994) (and cases cited therein<sup>1</sup>).

The purpose of this common sense rule is simple: staying discovery in a suit which may be dismissed by a dispositive legal motion prevents the parties from wasting time and effort and makes the most efficient use of judicial resources. See McDonnell-Douglas, Corp. v. Polin, 429 F.2d 30, 30 (3<sup>rd</sup> Cir. 1970); Coastal States Gas Corp. v. Department of Energy, 84 F.R.D. 278, 282 (D. Del. 1979). In its explanation that a court must exercise appropriate control over discovery requests when a case presents dispositive legal issues, the Seventh Circuit stated the following:

[a]s we have pointed out, a district court has the power under Rules 26(c) and (d) of the Federal Rules of Civil Procedure, and in a clear case the duty, to defer a burdensome discovery request pending completion of discovery on an issue that may

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<sup>1</sup> Where the defendant responds to a plaintiff’s complaint with a motion to dismiss for failure to state a claim or where a dispositive legal motion is pending, for example, a court may properly deny or postpone a plaintiff’s discovery requests. See, e.g., Maxey by Maxey v. Fulton, 890 F.2d 279, 282 (10<sup>th</sup> Cir. 1989) (no discovery on merits of civil rights suit prior to ruling on the issue of qualified immunity if plaintiff does not allege a violation of the clearly established law); Marrese v. American Academy of Orthopaedic Surgeons, 706 F.2d 1488, 1493 (7<sup>th</sup> Cir. 1983) rev’d on other grounds, 470 U.S. 373 (1984) (discovery of confidential records prior to the ruling on legal issues of competitive effect in antitrust action is within the discretion of the trial court); Groves v. United States, 533 F.2d 1376, 1380 (5<sup>th</sup> Cir. 1976), cert. denied, 429 U.S. 1000 (1976) (plaintiff’s motion to compel production of tax records denied where dispositive issue was one of law); Ellingson Timber Co. v. Great Northern Ry., Co., 424 F.2d 497, 499 (9<sup>th</sup> Cir. 1970), cert. denied, 400 U.S. 957 (1970) (court may defer costly and possibly unnecessary discovery pending the resolution of a potentially dispositive preliminary issue); Cf. Sinclair Refining Co. v. Jenkins Petroleum P., Co., 289 U.S. 689, 693-94 (1933).

dispose of the entire case and thereby make the request moot. We are speaking here only of the postponement and not of denial, of discovery.

Marrese v. American Academy of Orthopaedic Surgeons, 706 F.2d 1488, 1497 (7<sup>th</sup> Cir. 1983), rev'd on other grounds, 470 U.S. 373 (1984). Therefore, the Federal Rules of Civil Procedure grant this Court the authority to stay discovery pending the outcome of a motion to dismiss based on a lack of jurisdiction.

**II. IN THIS CASE, STAYING DISCOVERY PENDING A DECISION ON DEFENDANT'S DISPOSITIVE MOTIONS IS PROPER BECAUSE THE MOTION IS WELL TAKEN AND WILL CONSERVE THE FEDERAL COURT'S JUDICIAL RESOURCES.**

In this case, Defendant seeks a protective order from this Court, deferring Gomez' forthcoming discovery requests until this Court rules on Defendant's dispositive motions. Based on a review of the applicable law, Defendant's dispositive motions are well-taken. Thus, a ruling in favor of Defendant would render any of Gomez' future discovery requests moot. Therefore, Defendant should not bear the burden and expense of responding to discovery requests pending a ruling on their motion to dismiss.

On July 1, 2010, Defendant filed its Motion to Dismiss No. I: Dismissal of Gomez's Fourteenth Amendment Equal Protection and Procedural and Substantive Due Process Claims. See [Docket No. 11]. This motion acknowledges that the facts upon which this Court must rely to decide the motion are those facts alleged in Gomez' complaint. See [Docket No. 11, pp. 2-4].

On July 5, 2010, Defendant filed its Motion for Partial Summary Judgment No. I: Dismissal of Plaintiff's Quo Warranto Action and Claims Brought under 42 U.S.C. §§ 1983, 1985, and 1986. See [Docket No. 14]. To argue that collateral estoppel applies, Defendant relies on the pleadings

from another case involving Gomez and the pleadings filed in the instant case. See [Docket No. 14, pp. 4-10]. Beyond citing to those pleadings, Defendant does not rely on any other facts that are outside of Gomez' complaint. See [Docket No. 14, pp. 4-10].

Having brought dispositive motions, discovery by Gomez to support the merits of his claims is completely unnecessary at this stage of the lawsuit. Defendant's motions do *not* challenge the factual basis of Gomez' cause of action or the merits of his claims. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). Further, Defendant's motions call for a legal determination, not an evidentiary determination, of Gomez' claims. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Thus, if this Court is convinced that Gomez will be unable to state a basis upon which to proceed to the merits of his claim, discovery should be stayed. Woods v. McEwen, 644 F.2d 797, 801 (9<sup>th</sup> Cir. 1981), cert. denied, 455 U.S. 942 (1982); B.R.S. Land Investors v. United States, 596 F.2d 353, 356 (9<sup>th</sup> Cir. 1979).

**WHEREFORE**, Defendant respectfully requests that this Court enter an Order, which grants the following relief:

- A. Overrules Gomez' Objection to the Prejudicial Order Entered, the Untrustworthiness of Assigned Judges, and the Erroneous Caption of Case [*Docket No. 18*];
- B. Stays *all* discovery until the Court rules on Defendant's dispositive motions;
- C. Awards Defendant its attorney's fees and costs; and
- D. Orders all other relief this Court deems just and proper.



Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

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I hereby certify that on this  
19<sup>th</sup> day of July 2010, the  
foregoing was electronically  
served through the CM/ECF  
system to the following:

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/s/ Luis Robles  
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