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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALAN M. SCHLOTTMANN,
Plaintiff,

2:12-cv -00692-JCM-VCF

ORDER

vs.
THE STATE OF NEVADA, EX. REL BOARD
OF REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION, *et al.*,
Defendants.

Before the court is Plaintiff Alan M. Schlottmann’s Objection and Motion to Reconsider Magistrate Judge Cam Ferenbach’s Minute Order Denying Discovery Plan (hereinafter “Objection and Motion”). (#15). On July 31, 2012, the Honorable James C. Mahan referred the issues raised in the Objection and Motion (#15) to the undersigned Magistrate Judge for reconsideration.

BACKGROUND

Plaintiff Schlottmann filed his complaint in the Eighth Judicial District Court, Clark County, Nevada, on December 20, 2012. (#1-2). The action was removed to this court on April 25, 2012, based on Federal Question jurisdiction under 28 U.S.C. §§§ 1331, 1441(a)-(b), and 1367. (#1). Defendants filed their answer on June 15, 2012. (#12). The Discovery Plan and Scheduling Order was due by July 30, 2012. *Id.* The parties filed a document on July 18, 2012, entitled “Stipulated Discovery Plan and Scheduling Order; Special Scheduling Review Requested” (hereinafter “Discovery Plan”). (#13). This

1 document does not comply with LR 26-1 (e), headed “Form of Stipulated Discovery Plan and
2 Scheduling Order, Applicable Deadlines.” That rule provides that “[t]he discovery plan shall include, in
3 addition to the information required by Fed. R. Civ. P. 26(f), the following information: . . .” (Emphasis
4 added.) LR 26-1 (e). The required information is listed in subsections (1) – (7) of LR 26-1(e). Other
5 than stating the date when the defendant answered plaintiff’s complaint and including a signature line
6 for the judge, the Discovery Plan (#13) filed by plaintiff does not include any of the required
7 information. *See* LR 26-1(e)(1)–(7).

8 The Discovery Plan filed by the plaintiff was not a plan at all, but a joint request by the parties
9 that (1) the commencement of discovery as well as all applicable discovery deadlines be stayed pending
10 the scheduling and occurrence of an Early Neutral Evaluation Conference (hereinafter “ENE”) in this
11 case, and (2) in the event there is no settlement, the parties submit a Discovery Plan and Scheduling
12 Order in compliance with court rules within 14 days after conclusion of the ENE conference. (#13).

13 As discussed more fully below, the court has reviewed Plaintiff’s Objection and Motion (#15),
14 and finds plaintiff’s arguments to be without merit. The parties must file a Discovery Plan and
15 Scheduling Order in compliance with the applicable Federal and Local Rules, on or before August 17,
16 2012.

17 **PROCEDURAL ISSUES**

18 The issue decided by the Minute Order (#14) entered on July 18, 2012, was whether or not
19 discovery should be stayed in this action. This is a pretrial matter which the undersigned Magistrate
20 Judge may hear and finally determine, as it is not a matter specifically enumerated as an exception under
21 28 U.S.C. § 636(b)(1)(A). *See* 28 U.S.C. § 636(b)(1)(A); LR IB 1-3. Accordingly, any objection to the
22 Minute Order (#14) is governed by LR IB 3-1, entitled “Review And Appeal – United States Magistrate
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1 Judge; Review Of Matters Which May Be Finally Determined By A Magistrate Judge In Civil And
2 Criminal Cases.” LR IB 3-1; *See* 28 U.S.C. § 636 (b)(1)(A).

3 Plaintiff’s Objection and Motion (#15) incorrectly invokes LR IB 3-2, which establishes
4 procedures for the “Review Of Matters Which May Not Be Finally Determined By A United States
5 Magistrate Judge In Civil And Criminal Cases, Administrative Proceedings And Probation Revocation
6 Proceedings.” LR IB 3-2; *See* 28 U.S.C. § 636(b)(1)(B).

7 In accordance with 28 U.S.C. § 636 (b)(1)(A), the standard of review under LR IB 3-1 is “clearly
8 erroneous or contrary to law,” while under LR IB 3-2, the district judge makes a *de novo* determination
9 of the issues. *See* LR IB 3-1(a) and 3-2(b).

10 Plaintiff’s Objection and Motion confuses these two standards. (#15). In the Standard of
11 Review section, plaintiff cites *Gordon v. Vasquez*, 859 F. Supp. 413 (E.D. Cal. 1994), for the
12 proposition that “[t]he District Court must review the Magistrate’s findings of facts and conclusions of
13 law *de novo*. *Id.* at 416; *McDonnell Douglas Corp. v. Commodore Bus. Machines Inc.*, 656 F.2d 1309,
14 1313 (9th Cir. 1981); 28 U.S.C. §636(b)(1).” *Id.* at page 3, line 8.

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16 Here is the actual language of Judge Karlton’s order in the *Gordon* case:

17 On the other hand, a magistrate judge's determination concerning matters
18 referred pursuant to 28 U.S.C. § 636(b)(1)(B) are for the most part
19 reviewed *de novo*. Thus, the district court reviews *de novo* those portions
20 of the proposed findings of fact to which objection has been made, 28
21 U.S.C. § 636(b)(1)(C); *McDonnell Douglas Corp. v. Commodore Business
22 Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir.1981).

23 *Gordon*, 859 F. Supp. at 416.

24 In his argument, plaintiff blurs the distinction between matters which may be finally determined
25 by a Magistrate Judge under 28 U.S.C. § 636(b)(1)(A) with those which require findings and
recommendations under 28 U.S.C. § 636(b)(1)(B). (#15). Plaintiff thus creates the impression that the

1 ruling objected to must be reviewed *de novo*. *Id.* After erroneously setting the highest possible standard
2 of review, at page 7 line 15, plaintiff then confusingly argues that denial of a discovery stay in this case
3 “was clearly erroneous and contrary to law.” *Id.*

4 **RECONSIDERATION**

5 The undersigned Magistrate Judge takes seriously his obligation under Fed. R. Civ. P. 1 to
6 administer the civil rules “to secure the just, speedy and inexpensive determination of every action and
7 proceeding.” Staying discovery without a fixed date for the end of the stay often results in undue delay.
8 It is well-established that a party seeking a stay of discovery carries the heavy burden of making a strong
9 showing why discovery should be denied. *Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175
10 F.R.D. 554, 556 (D. Nev. 1997) (*citing Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)).

11 Fed. R. Civ. P. 26(f) and LR 26-1 mandate the setting of deadlines for completing pretrial tasks,
12 so that the parties will prepare their cases for trial in a just, speedy and inexpensive manner. A minimal
13 amount of effort is required to prepare and file a Discovery Plan and Scheduling Order. Once the
14 Discovery Plan and Scheduling Order is filed, the only discovery which must be completed within a
15 short period of time is the exchange of initial disclosures. This exchange of information is not
16 burdensome and might aid in preparation for a successful ENE.

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18 The parties are free to request an extension of the Rule 26-1 deadlines, justifying the request by
19 their agreement to hold off on expensive discovery until after the ENE is concluded. *See* LR 26-4. If
20 the ENE is delayed, appropriate extensions are possible. *Id.* Requiring the filing of the Discovery Plan
21 and Scheduling Order now will create a schedule which can be adjusted depending on the date of the
22 ENE. As reflected in the case law cited by plaintiff (#15), blanket stays of discovery are reserved for
23 unusual circumstances.
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1 *Andrus v. D.R. Horton, Inc.*, 2:12-CV-00098-ECR, 2012 WL 1971326 (D. Nev. June 1, 2012),
2 cited by plaintiff, involved a motion to compel arbitration. When a motion to compel arbitration is
3 pending, discovery in the District Court case is very limited, and the court may stay an action as to not
4 deprive the parties “of the inexpensive and expeditious means by which the parties had agreed to resolve
5 their disputes.” See *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999)(citing *Prima Paint*
6 *Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, 87 S.Ct 1801, 18 L.Ed.2d 1270 (1967); see also
7 *Sparking v. Hoffman Construction Co.*, 864 F.2d 635, 638 (9th Cir. 1988); *Alascom, Inc. v. ITT North*
8 *Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir.1984). There is no motion to compel arbitration pending in the
9 instant matter.

10 The Private Securities Litigation Reform Act of 1995 (hereinafter “PSLRA”), also cited by
11 plaintiff, imposes a mandatory stay on discovery in actions relevant to that Act until an initial motion to
12 dismiss is decided. See 15 U.S.C. § 78u-4(b)(3)(B) (providing that “all discovery and other proceedings
13 shall be stayed during the pendency of any motion to dismiss...”). The purpose and intent of the PSLRA
14 mandatory stay is: (i) “to prevent unnecessary imposition of discovery costs on defendants;” and (ii) to
15 ensure that class action complaints “stand or fall based on the actual knowledge of the plaintiffs rather
16 than information produced by the defendants after the action has been filed.” *SG Cowen Sec. Corp. v.*
17 *U.S. Dist. Ct.*, 189 F.3d 909, 911-12 (9th Cir. 1999). See also *In re Metro. Sec. Litig.*, 2005 U.S. Dist.
18 LEXIS 46033, at *11-*12 (E.D. Wash. 2005).

19 The policy reasons behind the PSLRA’s legislative limitation on discovery do not apply to this
20 action. Plaintiff’s complaint alleges (1) employment discrimination under the Age Discrimination in
21 Employment Act of 1967, as amended 29 U.S.C. § 621 *et seq.*, and the Nevada anti-discrimination
22 statutes, N.R.S. 613.310 *et seq.*, (2) a claim for retaliation, and (3) a claim for negligent hiring,
23 supervision, and retention. (#1-2). Plaintiff’s claims on behalf of himself do not arise under the
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1 PSLRA, and the mandatory stay provided by 15 U.S.C. § 78u-4(b)(3)(B) is not applicable. *Id*; *See also*
2 15 U.S.C. § 78u-4(a)(1)(stating that “[t]he provisions of this subsection shall apply in each private action
3 arising under this chapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil
4 Procedure.”).

5 In certain circumstances, a pending motion to dismiss might justify a discovery stay for the
6 reasons articulated by then Magistrate Judge Hunt in *Turner*, 175 F.R.D. 554. Even when a motion to
7 dismiss is pending, a showing that discovery may involve some inconvenience and expense does not
8 suffice to establish good cause for the stay of discovery. *Turner*, 175 F.R.D. at 556 (citing *Blankenship*,
9 519 F.2d at 429); *Twin City*, 124 F.R.D. at 653. The factors the court considers in those circumstances
10 do not apply here, as there is no motion to dismiss pending in this matter.

11 **CONCLUSION**

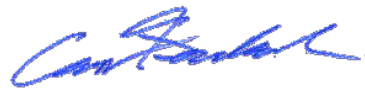
12 Accordingly, and for good cause shown,

13 Plaintiff Alan M. Schlottmann’s Motion for Reconsideration (#15) is GRANTED.

14 After reconsidering the request for discovery stay, in light of the arguments raised by Plaintiff in
15 his Objection and Motion (#15), the Court finds that a discovery stay should not be entered in this case.

16 THEREFORE, IT IS ORDERED that the parties must file a Discovery Plan and Scheduling
17 Order on or before Friday, August 17, 2012.

18 DATED this 1st day of August, 2012.

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CAM FERENBACH
22 UNITED STATES MAGISTRATE JUDGE
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