

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AURORA VALENZUELA,

Plaintiff,

vs.

CULINARY TRAINING ACADEMY, *et al.*,

Defendants.

Case No. 2:10-cv-02012-RLH-PAL

ORDER

(Mot to Stay - Dkt. #39)

Before the court is Defendants', Southern Nevada Joint Management Culinary & Bartenders Training Fund, Steven Horsford, Irrita Peterson, Monica Ford, and Yvette Thomas' Motion to Stay Discovery Pending Decisions on Motions to Dismiss (Dkt. #39). The court has considered the Motion, Plaintiff's Opposition (Dkt. #40), and Defendants' Reply (Dkt. #42).

The moving Defendants seek an order staying discovery pending decisions on Motions to Dismiss (Dkt. ##27, 28) filed by Defendants January 21 and 24, 2011. The motions were fully briefed and under submission to the district judge when the motion to stay was filed. Counsel for the moving defendants asked counsel for Plaintiff to postpone further discovery and offered to stipulate to extend the discovery deadline if the motions to dismiss are denied so that all parties have adequate time to complete reasonable discovery. However, counsel for Plaintiff rejected this proposal and indicated he intended to move forward with discovery. The court approved the parties' proposed Discovery Plan and Scheduling Order which currently establishes a July 5, 2011 discovery cutoff. The parties participated in an Early Neutral Evaluation March 2, 2011. After the ENE, the parties disclosed initial witness lists, and produced initial documents. Plaintiff served Defendant Culinary Training Academy ("CTA") with written interrogatories, request for admissions and requests for additional discovery documents. CTA served responses to these written requests April 27, 2011. Counsel for Plaintiff rejected CTA's proposal that further discovery be postponed until the motions to dismiss were decided.

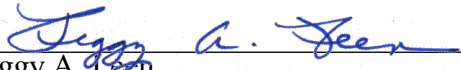
1 Plaintiff opposes the motion to stay discovery, although she does not oppose a possible
2 extension of the discovery cutoff and related case management deadlines indicating the deadline
3 currently set cannot be realistically met. Plaintiff argues that in the Ninth Circuit, the filing of a
4 dispositive motion under Rule 12(b)(6) is not sufficient in and of itself to grant a stay of discovery, and
5 that in the Ninth Circuit, the party seeking a stay bears a heavy burden of proving that a potentially
6 dispositive motion “is meritorious to the point of being certain to be granted.” Plaintiff asserts she has
7 asserted a plausible claim for a Family Medical Leave Act (“FMLA”) violation, and the Defendants
8 cannot meet their burden of showing that it is virtually certain the case will be dismissed, without leave
9 to amend. Thus, there is no basis to stay discovery, and the motion should be denied.

10 Defendants Reply (Dkt. #42) filed May 25, 2011, requests an expedited decision, and that the
11 motion be treated as an emergency motion to avoid potentially needless litigation fees and costs
12 pending decisions on the motions to dismiss. Defendants argue that granting the motion to stay will
13 benefit all parties even if the motions to dismiss are denied, because Plaintiff will likely have to amend
14 her complaint again. Defendants have no idea how the complaint will be amended if further
15 amendment is permitted, and Defendants have not yet filed an answer. The pending motions to dismiss
16 raise a preliminary question of law for the court to decide, and does not require discovery. Defendants
17 also argue that more recent federal cases recognize the need to stay discovery more frequently, and that
18 Plaintiff will not be harmed if the court grants the motion to stay.

19 On June 29, 2011, the district judge entered an order granting in part and denying in part the
20 pending Motions to Dismiss (Dkt. ##27, 28) before this court could address the motion to stay.
21 Additionally, the court has approved the parties’ stipulation extending the Discovery Plan and
22 Scheduling Order deadlines in a Scheduling Order (Dkt. #44) entered June 16, 2011. Accordingly,

23 **IT IS ORDERED** Defendant’s Motion to Stay (Dkt. #39) is **DENIED as MOOT**.

24 Dated this 27th day of July, 2011.

25
26 
27 _____
28 Peggy A. Leen
United States Magistrate Judge