

1 *Insurance v. Employers of Wausau*, 124 F.R.D. 652 (D. Nev. 1989) and *Turner Broadcasting System,*
2 *Inc. v. Tracinda Corp.*, 175 F.R.D. 554 (D. Nev. 1997). As *Twin City* and *Turner Broadcasting* state, a
3 pending dispositive motion is not “a situation that in and of itself would warrant a stay of discovery”
4 unless jurisdiction, venue, or immunity are preliminary issues. See *Turner Broadcasting*, 175 F.R.D. at
5 554, 555-6 (quoting *Twin City*, 124 F.R.D. at 652).

6 “It is well-established that a party seeking a stay of discovery carries the heavy burden of
7 making a strong showing why discovery should be denied.” *Tradebay*, 278 F.R.D. at 601 (citing
8 *Turner Broadcasting*, 175 F.R.D. at 556. Dispositive motions are a frequent part of federal practice.
9 An overly lenient standard for granting requests to stay due to pending dispositive motions would result
10 in unnecessary delay in many cases. Thus, in the context of a pending Rule 12(b)(6) motion, “[a] stay
11 of discovery should only be ordered if the court is ‘convinced’ that a plaintiff will be unable to state a
12 claim for relief.” *Id.* at 603. This often requires a magistrate judge to take a “preliminary peek” at a
13 pending dispositive motion. This “preliminary peek” is not intended to prejudge the outcome, but to
14 evaluate the propriety of a stay of discovery “with the goal of accomplishing the objectives of Rule 1.”
15 *Id.* (citation omitted). That discovery may involve inconvenience and expense is not sufficient to
16 support a stay of discovery. *Turner Broadcasting*, 175 F.R.D. at 556.¹

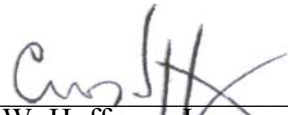
17 The Court has preliminarily reviewed the pending motion to dismiss and finds that Defendant
18 United States has made the necessary showing to support its requested stay. The complaint in this
19 matter was filed on December 29, 2011. (#1). It is difficult to determine from the face of the complaint
20 exactly what claims Plaintiff is attempting to bring, what facts might support those claims, and to which
21 Defendants the claims might apply. It is apparent, however, that there are several preliminary issues
22 which must be addressed, particularly regarding Defendant United States. In particular, the United
23 States challenges both subject matter jurisdiction and personal jurisdiction, claims that there has been
24 insufficient process and service of process, and claims that it is immune from section 1983 claims. See

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27 ¹ As noted in *Tradebay*, “[t]he explosion of Rule 12(b)(6) motions in the wake of *Bell Atlantic Corp. v. Twombly*,
28 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), has made the speedy determinations of cases increasingly
more difficult.” Thus, “[t]he fact that a non-frivolous motion is pending is simply not enough to warrant a blanket stay of all
discovery.” *Tradebay*, 278 F.R.D. at 603.

1 e.g. *Gerritsen v. Consulado General De Mexico*, 989 F.2d 340, 343 (9th Cir. 1993) (holding that a
2 federal agency is immune from a section 1983 suit absent revocation of that immunity by Congress).
3 Accordingly,

4 **IT IS HEREBY ORDERED** that Defendant United States' Motion to Stay Discovery
5 Plan/Scheduling Order (#21) is **granted**. The discovery stay is limited to Defendant United States. All
6 other parties shall proceed with discovery.

7 **IT IS FURTHER ORDERED** that Defendant United States' Motion to Request a Special
8 Scheduling Conference (#62) is **denied as moot**.

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11 C.W. Hoffman, Jr.
12 United States Magistrate Judge

13 Dated: May 8, 2012
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