

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

M. PAUL WEINSTEIN,

Plaintiff,

vs.

MERITOR, INC.,

Defendants.

2:16-cv-01076-JAD-VCF

ORDER

Before the Court is Defendant Meritor, Inc.'s Motion to Stay Discovery Pending Resolution of Motion to Dismiss (ECF No. 22). This order does not decide the motion to dismiss (ECF No. 23). Plaintiff filed an opposition to the motion to stay (ECF No. 29). And Meritor filed a reply in support of its motion to stay. (ECF No. 34).

LEGAL STANDARD

When evaluating a motion to stay discovery while a dispositive motion is pending, the court initially considers the goal of Federal Rule of Civil Procedure 1. The guiding premise of the Rules is that the Rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action." FED. R. CIV. P. 1. It needs no citation of authority to recognize that discovery is expensive. The Supreme Court has long mandated that trial courts should resolve civil matters fairly but without undue cost. *Brown Shoe Co. v. United States*, 370 U.S. 294, 306 (1962). This directive is echoed by Rule 26, which instructs the court to balance the expense of discovery against its likely benefit. See FED.R.CIV.P. 26(B)(2)(iii).

Consistent with the Supreme Court's mandate that trial courts should balance fairness and cost,

1 the Rules do not provide for automatic or blanket stays of discovery when a potentially dispositive motion
2 is pending. *Skellerup Indus. Ltd. v. City of Los Angeles*, 163 F.R.D. 598, 600–01 (C.D. Cal. 1995).
3 Pursuant to Federal Rule of Civil Procedure 26(c)(1), “[t]he court may, for good cause, issue an order to
4 protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”
5 Whether to grant a stay is within the discretion of the court. *Munoz–Santana v. U.S. I.N.S.*, 742 F.2d 561,
6 562 (9th Cir. 1984). The party seeking the protective order, however, has the burden “to ‘show good cause’
7 by demonstrating harm or prejudice that will result from the discovery.” FED. R. CIV. P. 26(c)(1).
8 Satisfying the “good cause” obligation is a challenging task. A party seeking “a stay of discovery carries
9 the heavy burden of making a ‘strong showing’ why discovery should be denied.” *Gray v. First Winthrop*
10 *Corp.*, 133 F.R.D. 39, 40 (N.D.Cal.1990) (citing *Blankenship v. Hearst Corp.* 519 F.2d 418, 429 (9th Cir.
11 1975)).

12 Generally, imposing a stay of discovery pending a motion to dismiss is permissible if there are no
13 factual issues raised by the motion to dismiss, discovery is not required to address the issues raised by the
14 motion to dismiss, and the court is “convinced” that the plaintiff is unable to state a claim for relief. *Rae*
15 *v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *White v. Am. Tobacco Co.*, 125 F.R.D. 508 (D. Nev.
16 1989) (citing *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) cert. denied, 455 U.S. 942 (1982).
17 Typical situations in which staying discovery pending a ruling on a dispositive motion are appropriate
18 would be where the dispositive motion raises issues of jurisdiction, venue, or immunity. *TradeBay, LLC*
19 *v. Ebay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011).

20 Courts in the District of Nevada apply a two-part test when evaluating whether a discovery stay
21 should be imposed. *Id.* (citations omitted). First, the pending motion must be potentially dispositive of the
22 entire case or at least the issue on which discovery is sought. *Id.* Second, the court must determine whether
23 the pending motion to dismiss can be decided without additional discovery. *Id.* When applying this test,
24 the court must take a “preliminary peek” at the merits of the pending dispositive motion to assess whether
25 a stay is warranted. *Id.* The purpose of the “preliminary peek” is not to prejudge the outcome of the motion

1 to dismiss. Rather, the court's role is to evaluate the propriety of an order staying or limiting discovery
2 with the goal of accomplishing the objectives of Rule 1.

3 **DISCUSSION**

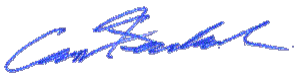
4 Defendant's Motion to stay is granted on the merits. There is a high likelihood that the amended
5 complaint will be significantly limited in scope if not eliminated when the pending motion to dismiss is
6 decided. After a "preliminary peek" and in light of the goals of Rule 1 to "secure the just, speedy, and
7 inexpensive" determination of all cases, the Court finds that the Motion to Dismiss has merit and may
8 resolve all issues in controversy and demonstrate good cause to stay discovery.

9 Accordingly, and for good cause shown,

10 IT IS HEREBY ORDERED that the Defendant Meritor, Inc.'s Motion to Stay Discovery Pending
11 Resolution of Motion to Dismiss (ECF No. 22) is hereby GRANTED. In the event resolution of
12 Defendant's motion to dismiss (ECF No. 23) does not result in the disposition of this case, the parties must
13 file a new joint discovery plan within 21 days of the issuance of the order resolving that motion.

14 IT IS FURTHER ORDERED that a status hearing is scheduled for 10:00 a.m., October 23, 2017,
15 in courtroom 3D.

16 DATED this 27th day of April, 2017.

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19 CAM FERENBACH
20 UNITED STATES MAGISTRATE JUDGE
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