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 2 STATE OF NEVADA, Department of
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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 JOHN MAHLER,
 10 Plaintiff,

CASE NO.: 2:16-cv-02810-APG-VCF

11 vs.

MOTION TO STAY DISCOVERY

12 BARBARA BIELECKI, NEVADA
 EMPLOYMENT SECURITY
 13 DIVISION, STATE OF NEVADA,
 RENEE OLSON, in her capacity as
 14 ADMINISTRATOR of the NEVADA
 EMPLOYMENT SECURITY
 15 DIVISION; KATIE JOHNSON, in her
 capacity as Chairwoman of the NEVADA
 16 EMPLOYMENT SECURITY DIVISION
 BOARD OF REVIEW, and DOES 1-10,
 17 Defendants.

18
 19 **COME NOW**, Defendants Renee Olson, Administrator, State of
 20 Nevada, Department of Employment, Training and Rehabilitation, Employment
 21 Security Division; Administrative Tribunal referee, Barbara Bielecki (Referee

1 Bielecki); and, Katie Johnson, Chairwoman of the Employment Security Division
2 Board of Review (hereinafter, collectively, “ESD”), by and through Division
3 Senior Legal Counsel, Laurie L. Trotter, Esq., and hereby move this Court to stay
4 discovery in this matter pending its ruling on the Defendants’ Motion To Dismiss.
5 This Motion seeks to stay discovery in the civil rights case commenced on
6 December 6, 2016, when Plaintiff John Mahler (Mahler) filed his “Civil Rights
7 Complaint Pursuant to 42 U.S.C. § 1983” (Complaint). This Motion is made and
8 based on the accompanying Memorandum of Points and Authorities, as well as all
9 papers and pleadings on file herein.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. FACTS**

12 Mahler alleges in the instant civil rights complaint that on December
13 7, 2014, about two (2) years before the commencement of this action, ESD
14 Administrative Tribunal Referee Barbara Bielecki (Referee Bielecki) violated his
15 due process rights. Referee Bielecki did so by ruling against him during the state
16 administrative hearing that focused on his alleged right to unemployment benefits.

17 Mahler sought judicial review of Referee Bielecki’s decision in this
18 state administrative matter and prevailed at the state district court level when the
19 state district court, by way of an order entered on March 14, 2017, remanded the
20 matter for a new hearing before a different ESD referee. This case remains
21 pending at the ESD Administrative Tribunal level.

1 The instant case and the underlying state administrative case involve
2 the same parties and stem from the same events. The federal due process rights
3 issue is raised in both. ESD and Referee Bielecki moved to dismiss this case on
4 March 17, 2017, raising issues of jurisdiction, immunity, statute of limitations.

5 **II. ARGUMENT**

6 The purpose of Federal Rule of Civil Procedure 12(b)(6) is to enable
7 defendants to challenge the legal sufficiency of a complaint without subjecting
8 themselves to discovery. *Rutman Wine Co. v. E & J Gallo Winery*, 829 F.2d 729,
9 738 (9th Cir.1987). The Ninth Circuit has held that discovery at the pleading stage
10 is only appropriate where factual issues are raised by a Rule 12(b) motion. A
11 pending Rule 12(b) motion to dismiss is sufficient cause for granting a protective
12 order. *Wagh v. Metris Direct, Inc.*, 363 F .3d 821, 829 (9th Cir.2003), *overruled*
13 *on other grounds*, *Odom v. Microsoft Corp.*, 486 F.3d 541, 551 (9th Cir.2007) (en
14 banc). Dispositive motions which raise issues of jurisdiction or immunity are
15 commonly situations in which federal courts determine that staying discovery
16 pending a ruling on a dispositive motion is appropriate. *Wood v. McEwen*, 644
17 F.2d 797, 801 (9th Cir.1981) (per curium). The United States Supreme Court has
18 squarely held that until the threshold issue of immunity is resolved, discovery
19 should not proceed. *Harlowe v. Fitzgerald*, 457 U.S. 800, 818 (1982). Immunity
20 includes not only immunity from liability, but immunity from participating in a
21 lawsuit.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. Rule 5(b), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing **MOTION TO STAY DISCOVERY**, together with a copy of the proposed **ORDER STAYING DISCOVERY** by placing the same within an envelope and depositing said envelope with the State of Nevada mail for postage and mailing from Carson City, Nevada, addressed for delivery as follows:

John Mahler
8705 Prairie Hill Drive
Las Vegas, NV 89134
Plaintiff, pro se

DATED this 17th day of March, 2017.

/s/ Sheri C. Ihler
SHERI C. IHLER

PROPOSED ORDER

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN MAHLER,

Plaintiff,

vs.

BARBARA BIELECKI, NEVADA
EMPLOYMENT SECURITY
DIVISION, STATE OF NEVADA,
RENEE OLSON, in her capacity as
ADMINISTRATOR of the NEVADA
EMPLOYMENT SECURITY
DIVISION; KATIE JOHNSON, in her
capacity as Chairwoman of the NEVADA
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW, and DOES 1-10,

Defendants.

CASE NO.: 2:16-cv-02810-APG-VCF

ORDER STAYING DISCOVERY

Plaintiff John Mahler’s (Plaintiff) filed a “Civil Rights Complaint Pursuant to 42 U.S.C. § 1983” (Complaint) herein on December 6, 2016.

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1 On March 17, 2017, Defendants Renee Olson, Administrator, State of
2 Nevada, Department of Employment, Training and Rehabilitation, Employment
3 Security Division; ESD's Administrative Tribunal Referee, Barbara Bielecki
4 (Referee Bielecki); and Katie Johnson, Chairwoman of the Employment Security
5 Division Board of Review (collectively ESD) filed a Motion To Dismiss.

6 The purpose of Federal Rule of Civil Procedure 12(b)(6) is to enable
7 defendants to challenge the legal sufficiency of a complaint without subjecting
8 themselves to discovery. *Rutman Wine Co. v. E & J Gallo Winery*, 829 F.2d 729,
9 738 (9th Cir.1987). Discovery at the pleading stage is only appropriate where
10 factual issues are raised. A pending Rule 12(b) motion to dismiss is sufficient
11 cause for granting a protective order. *Wagh v. Metris Direct, Inc.*, 363 F .3d 821,
12 829 (9th Cir.2003), *overruled on other grounds*, *Odom v. Microsoft Corp.*, 486
13 F.3d 541, 551 (9th Cir.2007) (en banc). Dispositive motions which raise issues of
14 jurisdiction or immunity are commonly situations in which federal courts
15 determine that staying discovery pending a ruling on a dispositive motion is
16 appropriate. *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir.1981) (per curium).

17 Referee Bielecki's and ESD's Motion To Dismiss raises issues of
18 jurisdiction and immunity and, if granted, would be dispositive of the entire case.

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1 It can be decided without discovery. Accordingly, a stay of discovery pending a
2 ruling on ESD's and Referee Bielecki's motion to dismiss will not unduly
3 prejudice any party or present a clear tactical disadvantage to the nonmoving party.

4 GOOD CAUSE APPEARING THEREFOR,

5 IT IS HEREBY ORDERED that discovery in this matter be, and the
6 same hereby is, stayed pending a ruling on ESD's Referee Bielecki's motion to
7 dismiss.

8 DATED this 18th day of April, 2017
~~March~~

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10 HONORABLE CAM FERENBACK ~~H~~
UNITED STATES MAGISTRATE JUDGE

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13 This proposed order was prepared
and submitted by:

Under LR 7-2(d), the failure of an opposing party to
file points and authorities in response to any motion,
except a motion under Fed. R. Civ. P. 56 or a motion
for attorney's fees, constitutes a consent to the granting
of the motion. To date, no opposition has been filed.
Accordingly, IT IS HEREBY ORDERED that the
Motion to Stay Discovery is GRANTED.

14 /s/ Laurie L. Trotter
15 LAURIE L. TROTTER, ESQ.
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