

1
2
3
4
5
6
7
8

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 RAYMOND GARCIA, et al.,

10 Plaintiff(s),

11 v.

12 SERVICE EMPLOYEES INTERNATIONAL
13 UNION, et al.,

14 Defendant(s).

Case No. 2:17-cv-01340-APG-NJK

ORDER

(Docket No. 67)

15 Pending before the Court is Plaintiffs' motion to stay discovery. Docket No. 67. Defendants
16 filed a response in opposition on October 16, 2017. Docket No. 74. No reply has been filed, and the
17 deadline for doing so expired on October 23, 2017. *See* Local Rule 7-2(b). The Court finds the motion
18 properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion
19 to stay discovery is **DENIED**.

20 The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*,
21 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic
22 or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay*,
23 *Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay carries the heavy burden of making
24 a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda*
25 *Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to
26 stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the
27 potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken
28 a "preliminary peek" at the merits of the potentially dispositive motion and is convinced that the plaintiff

1 will be unable to state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.
2 Nev. 2013).

3 Plaintiffs failed to meet these standards.¹ With respect to Defendants’ pending motion to
4 dismiss, Plaintiffs contend that the motion “is frivolous [and] has a very low likelihood of success.”
5 Docket No. 67 at 8. As Plaintiffs argue the opposite of the governing standard, the pendency of the
6 motion to dismiss is not a basis on which to stay discovery. *Compare Kor Media*, 294 F.R.D. at 581 (the
7 movant must convince the Court that the motion to dismiss will be granted). Moreover, the parties
8 appear to be in agreement that an order granting the motion to dismiss would not actually dispose of the
9 claims at issue here, but rather would render Plaintiffs’ claims ripe for adjudication in state court. *See*
10 Docket No. 67 at 13. Hence, the outcome of that motion to dismiss does not ultimately impact the need
11 for discovery, but rather simply transfers the case to a different forum to proceed further. This fact also
12 dooms the motion to stay discovery. *Cf. Kor Media*, 294 F.R.D. at 582 (holding that pendency of motion
13 to transfer was not grounds to stay discovery based on this reasoning).²

15
16 ¹ On July 31, 2017, the Court rejected the request to stay discovery that was included with the
17 discovery plan and ordered that such a request must be made by filing a motion or stipulation addressing the
18 pertinent standards. Docket No. 53 at 1. It is not clear why Plaintiffs waited more than two months to file
19 the instant motion on October 2, 2017, Docket No. 67, at which time discovery should have been well
20 underway and the deadline for expert disclosures was imminent, *see* Docket No. 53 (setting initial expert
21 disclosure deadline of October 6, 2017). The motion to stay discovery indicates that Plaintiffs have
22 undertaken no affirmative discovery of any kind. *See* Docket No. 67 at 7 (stating that Defendants have
23 served initial disclosures and propounded written discovery, but that Plaintiffs have only served initial
24 disclosures).

25 ² A declaration attached to the motion to stay discovery notes that there is a pending motion to
26 remand and a pending motion to reconsider regarding remand, which Plaintiffs contend “could substantially
27 affect whether this case will proceed in federal court.” Docket No. 67 at 3. The declaration states without
28 elaboration that remand would lead to “invalidating the discovery order.” *Id.* Plaintiffs have failed to
provide any meaningful explanation as to why discovery conducted while litigation is pending in this Court
cannot be used in state court proceedings in the event of remand. As such, they have not carried their burden
of showing a stay of discovery is appropriate pending resolution of the remand dispute. *Cf. Kor Media*, 294
F.R.D. at 582. Moreover, United States District Judge Andrew P. Gordon has already denied a motion for
remand, and the uphill battle Plaintiffs face in seeking reconsideration further militates against staying
discovery. *See, e.g., Kabo Tools Co. v. Porauto Indus. Co.*, 2013 WL 5947138, at *2 (D. Nev. Oct. 31,
2017) (denying motion to stay discovery pending resolution of motion for reconsideration).

1 Plaintiffs also point to the pendency of their motion to amend the complaint as grounds to stay
2 discovery. Docket No. 67 at 13-14. In particular, Plaintiffs argue that such motion means that the
3 current discovery deadlines will need to be extended. *See id.* at 14. Plaintiffs fail to explain why the
4 Court should stop discovery based on its assertion that a pending motion will lead to the need for further
5 discovery. Quite the contrary, given Plaintiffs' assertion that they "will need a significant amount of
6 additional time to complete discovery," *id.* at 3, the Court is unclear why Plaintiffs have not filed a
7 request to extend discovery deadlines. At any rate, discovery should proceed based on the current claims
8 in the operative complaint and, in the event further amendment is allowed and such amendment requires
9 additional time for discovery, the parties may seek appropriate relief at that time.³

10 For the reasons outlined above, the motion to stay discovery is **DENIED**.

11 IT IS SO ORDERED.

12 DATED: October 24, 2017

13 
14 _____
NANCY J. KOPPE
United States Magistrate Judge

15
16
17
18
19
20
21
22
23
24
25
26
27 _____
28 ³ The Court expresses no opinion herein as to any future request to extend discovery deadlines.