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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK KALLING,)	Case No. 2:17-cv-02592-JCM-NJK
)	
Plaintiff(s),)	ORDER
)	
vs.)	(Docket No. 15)
)	
CANNERY CASINO RESORTS, LLC,)	
)	
Defendant(s).)	

Pending before the Court is the parties’ joint status report. Docket No. 15. For the reasons discussed more fully below, the request to stay discovery is **DENIED**. Docket No. 15.

Courts have broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir.1988). “The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011). In deciding whether to grant a stay of discovery, the Court is guided by the objectives of Rule 1 to ensure a just, speedy, and inexpensive determination of every action. *Id.* at 602-03. Motions to stay discovery pending resolution of a dispositive motion may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a “preliminary peek” at the merits of the potentially dispositive motion to evaluate the likelihood of dismissal. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013). A party seeking to stay discovery pending resolution of a potentially dispositive motion bears the burden of establishing that discovery should be

1 stayed. *See Kabo Tools Co. v. Porauto Indus. Co., Ltd.*, 2013 U.S. Dist. Lexis 156928, *1 (D. Nev. Oct.
2 31, 2013) (citing *Holiday Sys., Int'l of Nev. v. Vivarelli, Scharwz, and Assocs.*, 2012 U.S. Dist. Lexis
3 125542, *5 (D. Nev. Sept. 5, 2012)).

4 On March 27, 2018, the Court granted the parties' request to extend the stay of discovery 30 days
5 to facilitate settlement discussions. Docket No. 14. In the instant joint status report, the parties submit
6 that, although they have not reached a resolution, they are still engaged in settlement discussions.
7 Docket No. 15. The parties further submit that Defendant intends to respond to Plaintiff's complaint
8 by May 17, 2018, by filing a motion to dismiss. *Id.* The parties request a stay of discovery pending
9 resolution of Defendant's motion to dismiss. *Id.* at 2.

10 The Court finds that a stay of discovery is not appropriate in this case. Most significantly, the
11 Court cannot issue an order based on a hypothetical filing. *See* Docket. It bears repeating that the filing
12 of a non-frivolous dispositive motion, standing alone, is simply not enough to warrant staying discovery.
13 *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead, the Court must be "convinced" that the dispositive
14 motion will be granted. *See, e.g., id.* "That standard is not easily met." *Kor Media*, 294 F.R.D. at 583.
15 "[T]here must be *no question* in the court's mind that the dispositive motion will prevail, and therefore,
16 discovery is a waste of effort." *Id.* (quoting *Traska v. Int'l Game Tech.*, 2011 U.S. Dist. LEXIS 39275,
17 *8 (D. Nev. Mar. 29, 2011)) (emphasis in original). The Court requires this robust showing that the
18 dispositive motion will succeed because applying a lower standard would likely result in unnecessary
19 delay in many cases. *Id.* (quoting *Traska*, 2011 U.S. Dist. LEXIS 39275, at *10).

20 For the reasons discussed above, the Court **DENIES** the parties' request to stay discovery.
21 Docket No. 15.

22 IT IS SO ORDERED.

23 DATED: April 27, 2018

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25 _____
26 NANCY J. KOPPE
27 United States Magistrate Judge
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