

1 motion without prejudice, finding that Plaintiff failed to argue why the deadline to file a motion to amend,
2 March 15, 2018, should not be enforced. (ECF No. 28).

3 On November 28, 2018, Defendants filed an emergency motion to extend or stay discovery
4 pending Plaintiff's filing of a new action covering the claims that would have been added to the case had
5 the motion to amend been granted. (ECF No. 33). Plaintiff opposed the motion, arguing that the delays
6 in the case were caused by Defendants' actions (including refusing to stipulate to an amended complaint),
7 delay would prejudice counsel as a solo practitioner, and

8 While Plaintiff will highly likely file a new action, no action has been filed
9 at this time. Moreover, any new action will not involve any common
10 Defendants and will not include any common causes of action thereby
11 consolidation is not required. Finally, the new action may not include
12 federal claims, so a basis for removal may not even exist.

13 (ECF No. 36 at 3-4). At a hearing on December 17, 2018, the Court granted the motion to extend discovery
14 in part, setting the following deadlines: "discovery cut-off is now 4/17/19, dispositive motions cut-off is
15 5/17/19 and the joint pretrial order will be due by 6/17/19 or 30 days after decision on dispositive motion."
16 (ECF No. 38). The Court specifically stated that it "can't give any advisory opinions" regarding the
17 possibility that another case would be filed in the future. (ECF No. 39 at 45).

18 Defendants have now filed an emergency motion to stay proceedings in this case. (ECF No. 40).
19 On January 8, 2019, Plaintiff filed a state court action against Brent Hathaway, Nancy Rapoport, Diane
20 Chase, Ngai Pindell, and Len Jessup, all UNLV employees. (ECF No. 40-1 at 2-3, 10). Plaintiff asserts
21 § 1983, civil conspiracy, intentional infliction of emotional distress, negligent infliction of emotional
22 distress, aiding and abetting, and concert of action claims. (Id. at 4-10). Plaintiff must serve the
23 defendants in the state case by May 10, 2019, and Plaintiff has indicated that "Plaintiff [i]s declining to
24 proceed with service of process because the State Court Action had only been to preserve the statute of
25 limitations, and not because Plaintiff actually intended to proceed with the case." (ECF No. 40 at 2, 4).
Defendants move to stay proceedings in this case because (1) the time to serve in the state case goes

1 beyond the discovery deadline in this case and (2) the state case will likely be removed and consolidated
2 should Plaintiff pursue the state case. (Id. at 4-5). Defendants argue that they will be prejudiced by having
3 to conduct duplicative discovery should this case not be stayed. (Id. at 6). “Defendants request the Court
4 stay the proceedings in this matter and set a status check in ninety (90) days to determine if the State Court
5 Action has been served, and the progress of removal and consolidation.” (Id. at 7).

6 In opposition, Plaintiff argues that Defendants are improperly seeking another extension of
7 discovery, as they have a history of delays in this case. (ECF No. 42 at 2-3). Plaintiff asserts that
8 “Defendants are once again asking the Court to break out a crystal ball to determine if the state court
9 action will or will not go forward, whether it will or will not be removed and if so if the Court will or will
10 not consolidate the cases.” (Id. at 5).

11 The Court held a hearing regarding the motion to stay on March 6, 2019. (ECF No. 45).¹ When
12 discussing the state case, Defendants’ counsel stated that she will not attempt to remove the case until and
13 unless the state defendants are served because of the additional resources it would cost to do so. The
14 parties also discussed Plaintiff’s pending UNLV grievance for a promotion decision from 2018.
15 Defendants stated that the grievance could be resolved by May 2019, while Plaintiff asserted the grievance
16 process could take a year or more to resolve.

17 ANALYSIS

18 Whether to grant a stay is within the discretion of the court. *Munoz-Santana v. U.S. I.N.S.*, 742
19 F.2d 561, 562 (9th Cir. 1984). “[A] party seeking a stay of discovery carries the heavy burden of making
20 a strong showing why discovery should be denied.” *Ministerio Roca Solida*, 288 F.R.D. at 503.

21 Under *Landis v. N.A. Co.*, 299 U.S. 248 (1936)² at its progeny, when evaluating a motion to stay
22 based on another pending action, the Court must weigh competing interests such as

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24 ¹ ECF No. 45 is the minutes of the hearing, which was recorded.

25 ² Plaintiff cites *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976) as the standard the Court should apply
in evaluating this motion to stay. (ECF No. 42 at 6). *Colorado River* focusses on when a federal court stays or dismisses its

1 the possible damage which may result from the granting of a stay, the
2 hardship or inequity which a party may suffer in being required to go
3 forward, and the orderly course of justice measured in terms of the
simplifying or complicating of issues, proof, and questions of law which
could be expected to result from a stay.

4 CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). “A stay should not be granted unless it appears
5 likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the
6 claims presented to the court.” Leyva v. Certified Grocers of California, Ltd., 593 F.2d 857, 864 (9th Cir.
7 1979).

8 Under Landis, staying this case is appropriate. Plaintiff will not be damaged from the stay besides
9 some potential inconvenience. If a stay is not granted, Defendants could face duplicative discovery. The
10 state case contains a federal claim, and is at least facially eligible for removal. As discussed at the March
11 6, 2019 hearing, Plaintiff’s pending UNLV grievance could result in a third similar case being filed. The
12 Court would benefit from staying this case rather than allowing discovery to close and potentially having
13 to then re-open discovery and coordinate two or more cases.

14 The Court acknowledges the difficulty that the uncertainty in this case causes. Neither party is
15 sure what will happen with the state case or Plaintiff’s UNLV grievance process. Plaintiff has not
16 committed to pursuing the state case. Defendants’ counsel has expressed that she will not attempt to
17 remove the case until and unless the state defendants are served. This may not take place until May 10,
18 2019 or later, which is after the April 17, 2019 discovery deadline currently set in this case. Both parties
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22 case to allow for a state court to rule on a case concerning the same matter. See Montanore Minerals Corp. v. Bakie, 867 F.3d
1160, 1165-66 (9th Cir. 2017).

23 Colorado River does not apply to this case. This Court is not granting a stay to allow the state court to finally rule on the merits
24 of Plaintiff’s claims against certain UNLV employees. The Court is not contemplating giving up jurisdiction over the federal
25 case through a lengthy stay. The purpose of the stay, as discussed below, is to provide an opportunity for the potential
consolidation of cases in federal court.

1 could be considered at fault for the uncertainty and delays in this case.³ A stay is the most efficient way
2 to allow these uncertainties to resolve.

3 Accordingly, and for good cause shown,

4 IT IS HEREBY ORDERED that Defendants' Emergency Motion to Stay Proceedings (ECF No.
5 40) is GRANTED. The case is stayed pending further order by the Court.

6 IT IS FURTHER ORDERED that a status conference is set for 10:00 AM, September 12, 2019, in
7 Courtroom 3D. The parties must file a joint statement on or before September 5, 2019, discussing the
8 status of the state case and Plaintiff's UNLV grievance. Should the parties agree that this case is ready
9 proceed prior to the status conference, they may submit a stipulated amended discovery plan and
10 scheduling order at any time.

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12 DATED this 7th day of March, 2019.

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15 CAM FERENBACH
16 UNITED STATES MAGISTRATE JUDGE
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25 ³ However, neither party's conduct arises to the level of sanctions at this time. Counsel for both parties are attempting to serve the interest of their clients.