

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Case No. 4:10-cv-142-D

MARK DANIEL LYTTLE,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

**FEDERAL DEFENDANTS'
MOTION FOR TEMPORARY
STAY OF PROCEEDINGS**

**Fed. R. Civ. P. 6(b)
Local Civil Rule 6.1**

**FEDERAL DEFENDANTS' MOTION
FOR A TEMPORARY STAY OF PRETRIAL PROCEEDINGS**

Defendants, the United States, Dashanta Faucette, Dean Caputo, and Robert Kendall (the “Federal defendants”), respectfully move the Court to stay all pretrial proceedings in this case pending a decision on a petition filed by the Federal defendants for centralized pretrial proceedings before the United States Judicial Panel on Multidistrict Litigation (the “JPML” or the “MDL Panel”).¹

BACKGROUND

This action is one of two related lawsuits filed by Lyttle stemming from his allegedly unlawful removal to Mexico in December 2008.² In short, the central dispute here – which is the same as in the related Georgia action – is whether state and federal officials detained Lyttle and

¹ Pursuant to Local Civil Rule 6.1, counsel for the Federal defendants have conferred with counsel for all parties and is authorized to represent that co-defendant, the North Carolina Department of Correction, does not oppose the relief requested in this motion. Counsel for plaintiff, Mark Daniel Lyttle, has indicated that plaintiff opposes this motion.

² In addition to the instant action, Plaintiff filed a similar suit in the Northern District of Georgia, which also names the United States as a defendant, plus eight different individual Federal defendants. *See Lyttle v. United States*, No.1:10-cv-03302-CAP (N.D. Ga.).

recommended that he be deported despite his claims of being a U.S. citizen. N.C. Compl. ¶¶ 1-3 (Doc. No. 8); Ga. Compl. ¶¶ 1-2 (Doc. No. 1). Because the factual and legal questions are virtually the same in each case, all of the Federal defendants in both actions filed a motion with the JPML on December 23, 2010 (the “MDL motion”). *See In Re Mark Daniel Lyttle Litig.*, MDL No. 2227 (Doc. No. 1).³ Pursuant to 28 U.S.C. § 1407(a), the Federal defendants in their MDL motion have requested that the JPML consolidate and centralize the related actions in this Court. *Id.* In light of the numerous issues common to both actions and the criteria used by the JPML, it is respectfully submitted that in our view there is a strong case for centralized pretrial proceedings. *See, e.g., Am. Family Mut. Ins. Co. Overtime Pay Litig.*, 416 F. Supp. 2d 1346 (J.P.M.L. 2006) (centralizing two actions with common questions of fact).

Lyttle filed the instant action on October 13, 2010. *See* Doc. No. 1. Caputo was served on November 18, 2010, and is presently required to answer or otherwise respond to the complaint on or before January 18, 2011.⁴ *See* Fed. R. Civ. P. 12(a)(3). Faucette was served on December 20, 2010, and is currently required to answer or otherwise respond on or before February 18, 2011. *See id.* Kendall was served on December 22, 2010, and is presently required to answer or otherwise respond on or before February 22, 2011. *See id.* The United States was served on October 25, 2010, and on December 22, 2010, this Court granted the United States’ unopposed motion for extension of time to respond to the complaint. *See* Doc. No. 21. Pursuant to that Order, the United States is presently required to answer or otherwise respond on or before January 27, 2011. *See id.* The North Carolina Department of Correction was served on

³ Federal defendants filed a copy of the MDL motion with this Court on December 23, 2010. *See* Doc. No. 26.

⁴ Out of an abundance of caution, and due to the impending deadline of January 18, 2011, defendant Caputo intends to file a separate motion for extension of time to answer or otherwise respond to plaintiff’s complaint.

November 4, 2010, and filed a motion to dismiss and an answer on December 23, 2010. *See* Doc. Nos. 24-25. Lyttle has until January 13, 2011, to respond to that motion. *See* Local Civil Rule 7.1(e)(1).

Given the pendency of the MDL motion, Federal defendants request that this Court temporarily stay all of the above, and any other, pretrial proceedings until the Panel has ruled on whether to centralize Lyttle's related actions. As discussed below, awaiting the JPML's decision would promote the principal goals of multidistrict litigation – *i.e.*, preserving the resources of the courts and litigants and avoiding inconsistent decisions regarding the same pretrial issues – by allowing a single judge to consider the similar factual and legal issues together at one time. *See, e.g., U.S. Postal Serv. Privacy Act Litig.*, 545 F. Supp. 2d 1367, 1369 (J.P.M.L. 2008); *see also Moore v. Wyeth-Ayerst Labs.*, 236 F. Supp. 2d 509, 512 (D. Md. 2002) (stating that staying proceedings pending a determination by the JPML “furthers the goals of judicial economy and consistency”).⁵

DISCUSSION

Although the filing of a motion seeking consolidation before the JPML does not automatically affect or suspend orders and pretrial proceedings in the district courts, *see* MDL Panel Rule 2.1(d), Federal courts possess the inherent power to stay proceedings before them to preserve judicial resources and to minimize burdens on the parties. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). When evaluating whether a stay is appropriate in the specific context of pending multidistrict litigation, “district courts generally consider three factors: (1) the potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action

⁵ Assuming the MDL Panel centralizes Lyttle's related actions in this Court, Federal defendants additionally propose that, within fourteen days of the JPML's order on their petition, all parties to those actions submit to this Court a proposed schedule for the defendants to answer or otherwise respond to the complaint, as well as a briefing schedule for any dispositive motions already filed.

is not stayed; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases are in fact consolidated.” *Esquivel v. BP Co. N. Am., Inc.*, No. B-10-227, 2010 WL 4255911, at *3 (S.D. Tex. Oct. 14, 2010) (internal quotations and citations omitted); *accord Benge v. Eli Lilly & Co.*, 553 F. Supp. 2d 1049, 1050 (N.D. Ind. 2008). Based on these considerations, “a majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997) (collecting cases); *see also Giles v. POM Wonderful LLC*, No. 10-61684-CIV, 2010 WL 4630325, at *1 (S.D. Fla. Nov. 8, 2010) (“It is common practice for courts to stay an action pending a transfer decision by the JPML.”) (internal quotations and citations omitted); *Divine Fish House, Inc. v. BP, PLC.*, No. 2:10-cv-01461, 2010 WL 2802505, at *2 (D.S.C. July 14, 2010) (“Courts frequently grant stays in cases when an MDL decision is pending.”) (collecting cases). District courts around the country – including those located in the Fourth Circuit – predominantly favor granting a stay while the JPML considers whether to consolidate related cases. *See Divine Fish House, Inc. v. BP, PLC.*, No. 2:10-cv-01461, 2010 WL 2802505, at *2 (D.S.C. July 14, 2010).

In this case, although plaintiff opposes the relief requested in this motion, a temporary stay of the proceedings would not appear to prejudice Lyttle. Indeed, Federal defendants request only a short, temporary stay while the JPML considers whether consolidation is appropriate. *Cf. Cajun Offshore Charters, LLC v. BP Prods. N. Am., Inc.*, No. 10-1341, 2010 WL 2160292, at *2 (E.D. La. May 25, 2010) (“District courts have granted motions to stay [pending a determination of the MDL Panel] after finding that the plaintiff would not be prejudiced by a slight delay.”) (collecting cases). And “[a] delay of a few months [pending JPML determination] . . . is, nonetheless, slight when compared to the hardship to the defendants and the interests of judicial

economy.” *Brandt v. BP, PLC*, No. 2:10-cv-01460, 2010 WL 2802495, at *2 (D.S.C. July 14, 2010) (collecting cases). Accordingly, if the MDL motion is granted, the transferee court may then consider all pretrial matters at that time. If not, this Court can immediately lift the stay and proceed as before.

Second, staying proceedings will also prevent unnecessary hardship on the Federal defendants. A temporary stay would ensure that the Federal defendants are not required to file multiple but duplicative responsive pleadings in separate but related cases. And it would also avoid the risk of conflicting rulings on similar dispositive motions likely to be filed by the Federal defendants both here and in the Georgia action. Awaiting the JPML’s decision would thus preserve the goals of multidistrict litigation – conserving resources, avoiding duplication of efforts, and preventing inconsistent rulings. *See, e.g., In re Iraq and Afghanistan Detainees Litig.*, 374 F. Supp. 2d 1356, 1357 (J.P.M.L. 2005).

Finally, if the JPML transfers the Georgia action to this Court, a stay will also ensure that all pretrial issues common to both cases are decided by this Court consistently and at the same time. *See, e.g., Bigley v. Sgarlato Labs., Inc.*, No. 09-cv-02262-WDM-KLM, 2010 WL 743587, at *2 (D. Colo. Mar. 1, 2010) (a stay would “conserve judicial resources and avoid the issuance of rulings on discovery and substantive motions inconsistent with those issued by other federal courts”). But this Court would similarly conserve judicial resources should the MDL Panel instead transfer the instant case to another district. *See, e.g., Paul v. Aviva Life and Annuity Co.*, No. 09-1038, 2009 WL 2244766, at *1 (N.D. Ill. July 27, 2009) (noting that the court would “run the risk of expending valuable judicial resources familiarizing [it]self with the intricacies of a case that may be coordinated or consolidated for pretrial purposes in another court”) (internal quotations and citation omitted); *Kline v. Earl Stewart Holdings, LLC*, No. 10-80912-CIV, 2010

WL 3432824, at *2 (S.D. Fla. Aug. 30, 2010) (awaiting the JPML’s decision “is far better for judicial economy and the consistency of judicial rulings”).⁶

In sum, a temporary stay would guarantee that the efforts of all the litigants and the Court will not be needlessly repeated or wasted. *See, e.g., Henley v. Bayer Corporation*, No. C-10-1366 MMC, 2010 WL 1980150, at *2 (N.D. Cal. May 17, 2010) (finding that a stay would “both conserve judicial resources and promote consistency in the determination of common issues”). The core aims of multidistrict litigation, therefore, are best achieved by allowing the MDL Panel to first decide whether the related cases should be centralized.

CONCLUSION

Federal defendants respectfully request that this Court stay all pretrial proceedings pending the JPML’s decision on the MDL motion. Assuming the MDL Panel centralizes Lyttle’s related actions in this Court, Federal defendants additionally propose that, within fourteen days of the JPML’s order on their petition, all parties to those actions submit to this Court a proposed schedule for the defendants to answer or otherwise respond to the complaint, as well as a briefing schedule for any dispositive motions already filed.

⁶ Ordering a stay of pretrial proceedings pending a decision of the MDL Panel is a well-established process. *See* Manual for Complex Litigation § 22.35 (4th ed. 2009) (staying proceedings can “increase efficiency and consistency, particularly when the transferor court believes that a transfer order is likely and when the pending motions raise issues likely to be raised in other cases as well.”); *see also In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) (holding that “[c]onsistency as well as economy is served” by staying consideration of a remand motion pending a decision by the JPML); *Sevel v. AOL Time Warner, Inc.*, 232 F. Supp. 2d 615, 616 (E.D. Va. 2002) (finding that a stay would “avoid confusion and duplication of effort and will further the purposes of the MDL Panel proceeding”).

Respectfully submitted this 11th day of January 2011,

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on January 11, 2011, I electronically filed Federal defendants' "Motion For a Temporary Stay of Pretrial Proceedings" using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

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