

The Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHESTER ANDERSON,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

CASE NO. 2:16-cv-00586-TSZ

STIPULATED MOTION AND
ORDER TO STAY DISCOVERY
AND DISCOVERY MOTION
DEADLINE PENDING
RESOLUTION OF DEFENDANT’S
MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P.
12(h)(3), OR, IN THE
ALTERNATIVE, FOR PARTIAL
SUMMARY JUDGMENT

INTRODUCTION

The parties in the above-entitled action, by and through their attorneys of record, hereby stipulate and agree that good cause exists to stay discovery and postpone the upcoming discovery motions filing deadline pending the Court’s resolution of the government’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(h)(3), or, in the Alternative, for Partial Summary Judgment (Motion to Dismiss). *See* Dkt. 40.

The parties request a stay of discovery and postponement of the discovery motions filing deadline because the government’s Motion to Dismiss is potentially dispositive of

1 | this action and they agree that the legal claims set forth in the motion can be resolved
2 | without additional discovery. The Motion to Dismiss is noted for April 27, 2018; the
3 | discovery motions filing deadline is April 19, 2018 and the discovery deadline is May 28,
4 | 2018. *See* Dkt. 31. Absent a stay of discovery, the parties anticipate that over the next
5 | two months, they will (1) depose several of Plaintiff's medical treatment providers (most
6 | of whom are located in Oregon), (2) depose each other's expert witnesses (including
7 | Plaintiff's prison expert, who is located in Louisiana), and (3) incur additional expert
8 | witness costs, including the government's Fed. R. Civ. P. 35 examination of Plaintiff.
9 | The parties agree that this particularly costly phase of discovery will likely have no
10 | bearing on the issues before the Court on the government's Motion to Dismiss, and, if the
11 | Court grants the government's motion, it would be superfluous. Accordingly, the parties
12 | submit that good cause supports a stay of discovery and postponement of the discovery
13 | motions filing deadline until the Court rules on the government's pending Motion to
14 | Dismiss.

15 | **STATEMENT OF FACTS**

16 | **A. The Government's Motion to Dismiss**

17 | The government's Motion to Dismiss seeks dismissal of Plaintiff's Third
18 | Amended Complaint (TAC) pursuant to Fed. R. Civ. P. 12(h)(3) due to lack of subject
19 | matter jurisdiction over Plaintiff's Federal Tort Claims Act (FTCA) claims. *See*
20 | *generally* Dkt. 40. The government contends that even if the Court were to accept
21 | Plaintiff's allegations as true, he cannot meet his threshold burden of proving that the
22 | Court has subject matter jurisdiction over his claims, which, the government argues, are
23 | precluded by the Inmate Accident Compensation Act (IACA). *See id.* If the Court
24 | agrees with the government, Fed. R. Civ. P. 12(h)(3) mandates dismissal of Plaintiff's
25 | TAC.

26 | Alternatively, the Motion to Dismiss seeks partial dismissal for lack of subject
27 | matter jurisdiction based on the discretionary function exception to the FTCA, and partial
28 | summary judgment on statute of limitations grounds. *See generally* Dkt. 40. If the Court

1 grants the Motion to Dismiss on either of these bases, the parties agree that it will
2 materially reduce the scope of this litigation and thus the scope of discovery.

3 **B. The Parties' Upcoming Discovery**

4 The parties have recently exchanged expert witness disclosures and will be
5 moving forward shortly with expert and final fact witness depositions. The depositions
6 will include several medical witnesses—up to five of whom are located in Portland,
7 Oregon—and Plaintiff's prison expert, who resides in Louisiana. Additionally, Plaintiff
8 has agreed to appear for a Fed. R. Civ. P. 35 physical examination with the government's
9 expert podiatrist prior to the close of discovery. Thus, the parties anticipate that they will
10 incur substantial, potentially unnecessary costs over the next two months if discovery is
11 not stayed while the Court decides whether it has subject matter jurisdiction over
12 Plaintiff's TAC.

13 **DISCUSSION**

14 **A. Standard for Stay of Discovery**

15 Fed. R. Civ. P. 26(c)(1)(A) provides that a "court may, for good cause, issue an
16 order to protect a party or person from . . . undue burden or expense, including . . .
17 forbidding [] discovery." *Id.* The Ninth Circuit has recognized that district courts have
18 "wide discretion in controlling discovery," which includes staying discovery until the
19 resolution of a dispositive motion. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir.
20 1988); *see also Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 672 (S.D.
21 Cal. 2001) (internal citations omitted) (courts have "broad discretion to stay discovery in
22 a case while a dispositive motion is pending."). When additional discovery would not
23 affect the court's decision on the pending dispositive motion, a "stay furthers the goal of
24 efficiency for the court and litigants." *Little*, 863 F.2d at 685.

25 Here, the parties stipulate and agree that good cause warrants a stay of discovery
26 because the Court can decide the government's Motion to Dismiss without them
27 engaging in further discovery. Additionally, the parties submit that a stay of discovery
28 furthers the Court's and parties' shared goal of efficiency by allowing the Court to

1 determine whether Plaintiff has any viable claims—and, if so, the scope of any remaining
2 litigation—before the Court or the parties expend additional resources on potentially
3 unnecessary matters. Accordingly, the parties request that the Court enter a stay of
4 discovery.

5 The parties also request that the Court postpone the upcoming discovery motions
6 filing deadline (April 19, 2018), which will lapse prior to the noting date for the
7 government’s Motion to Dismiss. If the Court denies the government’s motion, in whole
8 or in part, the parties respectfully request that the Court allow them to propose a new
9 discovery motions filing deadline and discovery deadline, and, if necessary, a new trial
10 date and pretrial deadlines.

11 CONCLUSION

12 For the reasons stated above, parties jointly request that the Court stay discovery
13 and postpone the upcoming discovery motions filing deadline pending the Court’s
14 resolution of the government’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(h)(3),
15 or, in the Alternative, for Partial Summary Judgment. A proposed form of Order is
16 attached hereto.

17 DATED this 6th day of April, 2018.

18
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1 **ORDER**

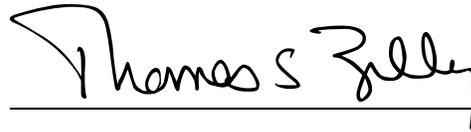
2 The parties having so stipulated and agreed, it is hereby **ORDERED** that:

3 The parties' Stipulated Motion, docket no. 42, is **GRANTED**; and

4 Discovery is stayed and the discovery motions filing deadline is postponed
5 pending the resolution of the Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P.
6 12(h)(3), or, in the Alternative, for Partial Summary Judgment ("Motion to Dismiss")
7 (Dkt. 40); and

8 If the Court denies the Defendant's Motion to Dismiss, in whole or in part, the
9 parties shall, within thirty (30) days of the Court's order denying the Motion to Dismiss,
10 jointly propose a new discovery motions filing deadline and discovery deadline, and, if
11 necessary, a new trial date and pretrial deadlines.

12
13 DATED this 12th day of April, 2018.

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17 Thomas S. Zilly
18 United States District Judge