

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:23-cv-01351-RMR-STV

GRCO LLC, a Missouri limited liability company,

Plaintiff,

v.

GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation
and political subdivision of the State of Colorado,

Defendant.

DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION TO STAY

Defendant Granby Ranch Metropolitan District, by and through undersigned counsel, submits its Reply to *Plaintiff’s Response in Opposition to Motion to Stay* (ECF No. 23, filed August 11, 2023) and states as follows:

ARGUMENT

**THE *STRING CHEESE* FACTORS USED TO DETERMINE DISCRETIONARY
MOTIONS TO STAY DISCOVERY FAVOR A STAY**

1. Plaintiff’s Interest

Plaintiff expresses a desire for expeditious resolution of claims but fails to show any cognizable prejudice from any delay attributable to the requested stay. Plaintiff attempts to support its contention by relying on generalized, conclusory statements that it will be subject to further payment of fees until the action is resolved and that it should not be “forced to delay pursuing” protection of its property. (Resp. at 5). Notably, however, Plaintiff does not argue that any delay from the stay will impede its ability to protect its property or litigate this action (*e.g.*, loss or

destruction of property or evidence), or that the stay will deprive it of any use or enjoyment of such property. Indeed, Plaintiff claims that “the vast majority of the relevant information is already in [its] possession.” (Resp. at 6). Under such circumstances, the first *String Cheese* factor does not weigh against a stay, especially when the requested stay is temporary in nature like that requested herein. *See Stone v. Vail Resorts Dev. Co.*, No. 09-cv-02081-WYD-KLM, 2010 U.S. Dist. LEXIS 8765, at *2-3 (D. Colo. Jan. 7, 2010) (where claims depended on documents already available to plaintiff, plaintiff’s ability to litigate was not likely to be irreparably harmed by temporary stay; granting stay).

Plaintiff also speculates in a generalized manner that delay from the requested stay “could” negatively impact its business forecasts but offers no explanation as to why it cannot simply forecast for the same fees and costs taking a stay of the action into account. In any event, Plaintiff’s reliance on such generalized propositions are insufficient to sway the balance against the requested stay. *Cf. BigBen 1613, Ltd. Liab. Co. v. Belcaro Grp., Inc.*, No. 17-cv-00272-PAB-STV, 2017 U.S. Dist. LEXIS 62523, at *5-6 (D. Colo. Apr. 24, 2017) (finding that “Plaintiff’s general interest in proceeding expeditiously does not overcome other [*String Cheese*] factors [] that weigh in favor of a stay” because Plaintiff failed to provide any specific examples of prejudice from the stay and “key evidence” in the case appeared to consist entirely of policies and transactions unlikely to be affected by any delay); *accord. Pembroke v. Trans Union, LLC*, No. 16-cv-03194-CMA-STV, 2017 U.S. Dist. LEXIS 232995, at *4 (D. Colo. May 5, 2017).

The cases cited by Plaintiff are not suited to the facts of this case. The stay requested in *Sanchez v. Hartley*, No. 13-cv-01945-WJM-CBS, 2016 U.S. Dist. LEXIS 185020, at *17-18 (D. Colo. Apr. 26, 2016) would have halted litigation until an appellate court reached a decision on a

petition for writ of certiorari. As such, the length of delay was far more uncertain in *Sanchez* because the district court had no control over the timing of the ruling on which the requested stay was dependent. Here, by contrast, the timing of the underlying ruling on the Motion to Dismiss is entirely in this Court's control.

Additionally, the *Sanchez* court was much farther into litigation at the time of the requested stay (interlocutory appeal), whereas this case is still in the very early stages of litigation. "A brief stay to determine the pending dispositive motion, which could resolve the matter in its entirety, will not unduly prejudice Plaintiff" at this early stage of litigation where even a Scheduling Conference has yet to occur. *Peterson v. O'Neal*, No. 22-cv-02773-RMR-MEH, 2023 U.S. Dist. LEXIS 24974, at *3-4 (D. Colo. Feb. 14, 2023).

Four Winds Interactive Ltd. Liab. Co. v. 22 Miles, Inc., No. 16-cv-00704-MSK-STV, 2017 U.S. Dist. LEXIS 4827, at *4-5 (D. Colo. Jan. 11, 2017) is also distinguishable in that the ruling was based on the fact that it was a patent case, where "[t]he hesitancy of courts in this district to grant stays of proceedings is particularly acute" given their complexity (among other factors). Plaintiff fails to explain how a ruling on Defendant's Motion to Dismiss in this case "could take significant time" simply based on the number of claims at issue, especially given Plaintiff's representation that all of the claims at issue share a common factual foundation. (Resp. at 6).

2. Burden on Defendant

The second factor favors a stay. Unless Plaintiff does not intend to propound any written discovery requests or take depositions, proceeding with litigation at this juncture will certainly unduly burden Defendant. Even aside from the demands of discovery, Defendant will have to expend time, effort, and resources in gathering information for disclosures and other litigation-

related tasks. Importantly, Defendant is a governmental entity that will have to expend significant public resources during litigation, including but not necessarily limited to the time and efforts of the District's Board members who are resident volunteers.

Plaintiff's argument relies on its assumption that at least some of its claims will withstand dismissal. Defendant's Motion to Dismiss, however, challenges all claims asserted and there is a distinct possibility none of Plaintiff's claims survive dismissal. Proceeding with discovery at this juncture before a ruling on the Motion to Dismiss would be entirely wasteful and unduly burdensome on the Defendant. Courts in this District have consistently recognized this as a factor that strongly favors the type of stay requested herein. *See, e.g., Pembroke v. Trans Union, LLC*, No. 16-cv-03194-CMA-STV, 2017 U.S. Dist. LEXIS 232995, at *5 (D. Colo. May 5, 2017); *Peterson v. O'Neal*, No. 22-cv-02773-RMR-MEH, 2023 U.S. Dist. LEXIS 24974, at *3-4 (D. Colo. Feb. 14, 2023).

This is especially so when, as in this case, the dispositive motion is based on statute of limitations and standing arguments. *See Alexander v. Foegen*, No. 10-cv-01993-LTB-MEH, 2011 U.S. Dist. LEXIS 16640, at *2-4 (D. Colo. Feb. 17, 2011) (recognizing that the plaintiff's interest in expeditious litigation was "outweighed" by the burden on defendants in proceeding with discovery, where there was a pending motion to dismiss raising a statute of limitations argument); *Atl. Richfield Co. v. Nl Indus.*, No. 20-cv-00234-RMR-KLM, 2021 U.S. Dist. LEXIS 210868, at *4-6 (D. Colo. Oct. 19, 2021) (finding the second factor to weigh in favor of stay even in absence of showing of undue burden because discovery "could be wasteful" given that pending dispositive motion was premised on statute of limitations defense).

Webb, cited in Plaintiff's Response, is inapposite. There, the plaintiff requested a stay arguing that discovery in a personal injury action would be meaningless given the defendant's motion to dismiss for lack of personal jurisdiction and improper venue. *Webb v. Brandon Express Inc.*, No. 09-cv-00792-WYD-BNB, 2009 U.S. Dist. LEXIS 113667, at *5 (D. Colo. Nov. 20, 2009). The Court opined that there would be no burden to defendants because they would be subject to the same discovery even if the pending motion were granted and the action later proceeded in a different venue. *Id.* (“[Defendant] claims only that the case is brought in the wrong court. Any discovery taken here can be used in the event the action must proceed in Tennessee or Michigan.”). Here, by contrast, Defendant would suffer unnecessary burden if the dispositive motion is ultimately granted.

3. Convenience to the Court

Plaintiff's argument, once again, relies on its assumption that some of the claims will survive dismissal.¹ As such, it relies on inapposite cases where the underlying motion to dismiss would not have been fully dispositive of the action. *See McGinn v. El Paso Cty.*, No. 22-cv-01387-WJM-MDB, 2022 U.S. Dist. LEXIS 206266, at *6 (D. Colo. Nov. 14, 2022) (“Relevant here is that a successful qualified immunity defense would not be dispositive of all claims in the proceeding.”); *Lester v. Gene Express, Inc.*, No. 09-cv-02648-REB-KLM, 2010 U.S. Dist. LEXIS 25379, at *1-2 (D. Colo. Mar. 2, 2010) (noting that defendants' request for stay was based on filing of Motion for *Partial* Summary Judgment, Motion to *Partially* Dismiss, and Motion to Compel Arbitration). The appropriate analysis, however, is whether “the pending motion to dismiss *seeks*

¹ “[I]n determining whether a stay is appropriate, the magistrate judge need not assess the merits of defendant[’s] dispositive motion[.]” *Cook v. Whyde*, No. 20-cv-02912-PAB-STV, 2021 U.S. Dist. LEXIS 48933, at *6-7 (D. Colo. Mar. 15, 2021) (citing cases).

to and *may* resolve this matter in its entirety.” See *Peterson v. O’Neal*, No. 22-cv-02773-RMR-MEH, 2023 U.S. Dist. LEXIS 24974, at *3-4 (D. Colo. Feb. 14, 2023) (emphasis added).

Here, a ruling granting Defendant’s Motion to Dismiss on all claims would be fully dispositive of this action. In that case, the court would be severely inconvenienced by litigation efforts that are ultimately rendered moot—especially given its busy docket. See *Woodson v. Armor Corr. Health Servs.*, No. 20-cv-00186-RM-KMT, 2020 U.S. Dist. LEXIS 126154, at *12-13 (D. Colo. July 17, 2020) (“it is certainly more convenient for the court to enter a stay until it is clear which of Plaintiff’s claims, if any, will move forward”); accord. *Atl. Richfield Co. v. NI Indus.*, No. 20-cv-00234-RMR-KLM, 2021 U.S. Dist. LEXIS 210868, at *5-6 (D. Colo. Oct. 19, 2021).

The third factor also favors a stay where, as in this case, the underlying motion to dismiss could narrow a multiple-count complaint. See *Serna v. City of Colo. Springs*, No. 23-cv-00728-DDD-MDB, 2023 U.S. Dist. LEXIS 137083, at *12 (D. Colo. Aug. 7, 2023); see also *Harris v. Startek USA, Inc.*, No. 22-cv-00437-RM-NYW, 2022 U.S. Dist. LEXIS 85148, at *8-9 (D. Colo. May 11, 2022) (concluding that judicial resources would best be conserved by staying discovery until the underlying motion is resolved because denying a stay at this juncture would require the court to convene a Scheduling Conference and enter a Scheduling Order, which may ultimately require significant amendments if motion is granted). Plaintiff’s argument (without explanation) that the scope of discovery will remain “virtually unchanged” is especially unpersuasive given that the number of claims asserted is bound to affect the proportionality analysis inherent in discovery practice.

Patterson, cited in Plaintiff’s response, also does not sway the balance against a stay. There, the case at issue had been pending for approximately *two-and-a-half years* at the time of

the order denying stay. *Patterson v. Santini*, No. 11-cv-01899-RM-KLM, 2014 U.S. Dist. LEXIS 12128, at *7 (D. Colo. Jan. 31, 2014). This case, which has been pending for less than three months, is not the type of “stale cases cluttering [the Court’s] docket” referenced in *Patterson*. The third factor heavily weighs in favor of the requested stay.

4. Interests of Non-Parties & Public Interest

Plaintiff’s argument that “the interests of non-parties and the public at large are served by Plaintiff’s lawsuit” is entirely speculative and based on *its* perception of the merits of the case. (Resp. at 8). As discussed, this is not the proper inquiry under *String Cheese*. Plaintiff also ignores the fact that the public has an interest in conserving public resources and the efficient functioning of government. (*See Mot.* at 4). A temporary stay as requested herein is especially appropriate when the defendant is a governmental-entity. *See Waak v. City of Woodland Park*, No. 22-cv-00120-DDD-MDB, 2022 U.S. Dist. LEXIS 218645, at *13 (D. Colo. Dec. 5, 2022). “Avoiding wasteful efforts by the court and litigants” serves this interest as well as the “general public’s primary interest” in reaching “an efficient and just resolution” of the matter. *Woodson v. Armor Corr. Health Servs. Inc.*, No. 20-cv-00186-RM-KMT, 2020 U.S. Dist. LEXIS 126154, at *13 (D. Colo. July 17, 2020); *Atl. Richfield Co. v. Nl Indus.*, No. 20-cv-00234-RMR-KLM, 2021 U.S. Dist. LEXIS 210868, at *4-6 (D. Colo. Oct. 19, 2021). If Defendant’s Motion to Dismiss is ultimately granted, moving the case forward at this juncture would be a waste of time, effort, and resources for all involved. The fourth and fifth *String Cheese* factors also weigh in favor of the temporary stay requested.

CONCLUSION

WHEREFORE, Defendant Granby Ranch Metropolitan District respectfully requests that its Motion to Stay (ECF No. 20) be granted and that all proceedings and discovery be stayed pending resolution of its Motion to Dismiss (ECF No. 19).

Dated this 18th day of August 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2023, I electronically filed the foregoing, **DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO STAY** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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