

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GIAN SINGH SAMBHI, et al.

Plaintiffs,

v.

No. CV-09-1053 MCA/RLP

HARPREET SINGH, et al.

Defendants.

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO STAY PROCEEDINGS

Following the Court's dismissal of their first attempt at stating a viable complaint [Doc. 66], plaintiffs filed an amended complaint [Doc. 67] that is defective for the same reasons that the Court rejected their original complaint. Accordingly, defendants have moved to dismiss plaintiffs' amended complaint. [Docs. 69-70] Until the Court can consider defendants' motion and likely dismiss plaintiffs' lawsuit, defendants should not be subjected to any additional burdens caused by defending plaintiffs' frivolous litigation. Defendants request the Court to stay all proceedings in this matter pending its ruling on Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, except plaintiffs' responses to discovery ordered by Chief United States Magistrate Judge Richard L. Puglisi on December 2, 2010 [Doc. 77] and any additional motions or proceedings related to those discovery responses by plaintiffs.

As the Supreme Court noted in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), a plaintiff who fails to adequately allege a viable complaint is not entitled to "unlock the doors of discovery". 129 S. Ct. at 1950. The purpose of a motion to dismiss is to streamline litigation by testing the legal sufficiency of a claim without extensive and costly discovery. *See Mann v. Brenner*, 375 Fed. Appx. 232, 239 (3rd Cir. 2010). Therefore, "[i]n certain circumstances it may be appropriate

to stay discovery while evaluating a motion to dismiss where, if the motion is granted, discovery would be futile.” *Id.* (citing and quoting *Iqbal*, 129 S. Ct. at 1954 (“Because respondent’s complaint is deficient under *Rule 8*, he is not entitled to discovery.”)).

The court in *Mann* properly stayed discovery pending the outcome of a motion to dismiss because, if the plaintiff could not satisfy the pleading standard established in *Iqbal*, further discovery would have been futile. 375 Fed. Appx. at 239. That is precisely the case here. If the Court dismisses plaintiffs’ complaint for failing to satisfying the *Iqbal* pleading standards, further discovery will be futile. Staying proceedings pending resolution of the motion to dismiss in this case is as appropriate as it was in *Mann* and necessary to prevent the parties and the Court from wasting further resources in this matter.

Federal Rule of Civil Procedure 26(c) allows the court to “make any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or undue burden or expense.” *String Cheese Incident, LLC v. Stylus Shows, Inc.*, 2006 U.S. Dist. Lexis 97388, *4 (D. Col. Mar. 30, 2006) (quoting Fed. R. Civ. P. 26(c)(1)). The court in *String Cheese* found that an order staying proceedings, for at least a limited period, was necessary to protect the defendants from undue burden and expense. 2006 U.S. Dist. Lexis 97388, at *4. In determining whether to stay proceedings pending the outcome of a motion to dismiss, the court may weigh the following factors: “(1) plaintiff’s interests in proceeding expeditiously with the civil action and the potential prejudice to plaintiff of a delay; (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.” *Id.* These factors weigh in favor of staying the proceedings in this case.

Plaintiffs will not be prejudiced by a stay. Defendants have produced to plaintiffs over 4,400 pages of corporate documents. Plaintiffs have not sought additional written discovery.

Consequently, plaintiffs seem to have completed written discovery and are poised to embark defendants in costly and time consuming depositions. In contrast, defendants will suffer an undue burden if they are forced to spend thousands of dollars on further proceedings before the Court eventually dismisses the claims against them. Defendants have already spent thousands of dollars preparing motions to dismiss inadequate complaints. Forcing defendants to endure further costly litigation before the Court determines whether any of the claims will survive the pending motion to dismiss will undoubtedly prejudice defendants. If the Court eliminates even some of plaintiffs' claims, it will reduce the scope of all future proceedings. The parties will be able to focus any additional written discovery, depositions, summary judgment motions, motions in limine, and other pretrial motions.

Staying proceedings will not inconvenience the Court. There are no other parties to whom a stay will not apply, so there will be no piecemeal discovery occurring during the stay. There are no persons not parties to this case whose interests will be affected by a stay. Finally, a stay will have no effect on the public interest. The Court need only weigh the limited prejudice to plaintiffs resulting from a stay against the significant prejudice to defendants if a stay is not granted. The only harm is to defendants in the absence of a stay.

WHEREFORE, Defendants request that pending the Court's ruling on Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, this Court stay this matter for all purposes except plaintiffs' responses to discovery ordered by Chief United States Magistrate Judge Richard L. Puglisi on December 2, 2010 [Doc. 77] and any additional motions or proceedings related to those discovery responses by plaintiffs.

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Certificate of Service

I HEREBY CERTIFY that on the 14th day of January, 2011, I filed the foregoing electronically through the CM/ECF system, which caused all counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Electronically Filed

David A. Streubel
Attorney for Defendants