

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**  
Gordon P. Gallagher, United States Magistrate Judge

Civil Case No. 16 – CV – 851 – WYD – GPG

ESTATE OF TOMAS BEAUFORD,  
TIFFANY MARSH, personally and as personal representative of the estate of TOMAS  
BEAUFORD, deceased;

Plaintiff,

v.

MESA COUNTY, COLORADO; a government entity;  
CORRECT CARE SOLUTIONS, LLC;  
CORRECTIONAL HEALTHCARE COMPANIES, INC.;  
CORRECTIONAL HEALTHCARE PHYSICIANS, P.C.;  
CORRECTIONAL HEALTHCARE MANAGEMENT, INC.;  
SHERRIFF STAN HIKEY;  
SERGEANT JASON L. MCCLELLAND;  
SERGEANT ANTHONY LEE;  
SERGEANT F/n/u HODSON;  
DEPUTY PETER M. DALRYMPLE;  
DEPUTY RICHARD D. PERKINSON;  
DEPUTY F/n/u MEDRANO;  
DEPUTY F/n/u BARNEY;  
DEPUTY KATHRYN M. DURRANT;  
DEPUTY F/n/u HERRING;  
DEPUTY F/n/u LAGRANGE;  
DEPUTY JOSHUA S. BAY;  
DEPUTY BRIDGETTE CHADD;  
DEPUTY F/n/u BOUTON;  
DEPUTY F/n/u MONTANO;  
DEPUTY F/n/u PUCKET;  
DEPUTY F/n/u DRAPER;  
NURSE RENEE WORKMAN;  
NURSE VELDA L/n/u;  
NURSE AUDRA L/n/u;  
NURSE ANN MARIA L/n/u.

Defendants.

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**ORDER REGARDING DEFENDANTS' MOTION TO STAY DISCOVERY**

(Defendants Correct Care Solutions, LLC, Correctional Healthcare Companies, Inc., Correctional Healthcare Physicians, P.C., Correctional Healthcare Management, Inc, Workman, Havens, Keenan, and Schans)

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This matter comes before the Court on Defendants' motion to stay discovery (ECF #60)<sup>1</sup> and Plaintiff's response (ECF # 71). Defendants move for a stay pending ruling on (partial) motions to dismiss (ECF #s 46 & 47). By Order of reference, (ECF #61), this matter has been referred to this Magistrate Judge. The Court has reviewed the pending motion and the response. The Court has also considered the entire case file, the applicable law, and is sufficiently advised in the premises. Oral argument would not materially assist the Court in adjudicating this motion. For the reasons discussed below, the Court enters the following Order DENYING Defendant's motion to stay discovery.

Defendants, in two groups (the nurse Defendants in ECF #46 and the Correct Care Defendants in ECF #47) have each moved for partial dismissal of Plaintiff's claims. If Defendants prevail with regard to their motions, the nurse Defendants will be left to defend against claims five and six and the Correct Care Defendants will be left to defend against claims one, five and six.

Defendants move for a stay of all discovery on the basis that Plaintiffs are not entitled to any discovery on the 42 U.S.C. § 1983 claims stating that such claims "are so conclusory that they cannot survive CHC Defendants' pending [m]otion[s] to [d]ismiss." (ECF # 60, p. 2).

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<sup>1</sup> "(ECF #60)" is an example of the convention I use to identify the docket number assigned to a specific paper by the Court's case management and electronic case filing system (CM/ECF). I use this convention throughout this Order.

Defendant goes on to engage in a discussion of when it is appropriate to deny discovery, focusing mostly on the plausibility standard we all know from *Iqbal*.

What Defendants never do is engage in any discussion related to the reality, that even if successful, each Defendant will still be facing some claim(s) and that such claim(s) will inevitably involve discovery. Further, Defendants never discuss how the discovery they will be required to engage in if successful in their partial motions for summary judgment will be different from the discovery now being requested, e.g., all discovery less what will not have to be provided if successful on the motions for partial summary judgment leaves a smaller pool of remaining discovery. How that smaller amount of discovery may differ from a perhaps greater total amount is never discussed.

A motion to stay discovery pending determination of a dispositive motion is an appropriate exercise of this court's discretion. *Landis v. North American Co.*, 299 U.S. 248, 254–255 (1936). The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. *Kansas City S. Ry. Co. v. United States*, 282 U.S. 760, 763 (1931).

To resolve motions to stay discovery, this District has adopted the following five-factor balancing test: (1) prejudice of a stay to plaintiff's interest in proceeding expeditiously; (2) the burden of discovery on defendant; (3) convenience of the court; (4) interests of third parties; and (5) the public interest. *See String Cheese Incident, LLC. v. Stylus Shows, Inc.*, 02–CV–01934–LTB–PAC, 2006 WL 894955, at \*2 (D.Colo. Mar. 30, 2006). *See also, Landis v. North American Co.*, 299 U.S. 248, 254 (1936); *United Steelworkers of America v. Oregon Steel Mills*,

*Inc.*, 322 F.3d 1222, 1227 (10th Cir.2003); *Battle v. Anderson*, 564 F.2d 388, 397 (10th Cir.1977).

The underlying principle in determination of whether to grant or deny a stay clearly is that “[t]he right to proceed in court should not be denied except under the most extreme circumstances.” *Commodity Futures Trading Com'n v. Chilcott Portfolio Management, Inc.*, 713 F.2d 1477, 1484 (10th Cir.1983)(quoting *Klein v. Adams & Peck*, 436 F.2d 337, 339 (2d Cir.1971). A stay of all discovery is generally disfavored. *See Chavez v. Young Am. Ins. Co.*, No. 06-cv-02419-PSF-BNB, 2007 WL 683973, at\*2 (D.Colo. Mar. 2, 2007). However, a stay may be appropriate if “resolution of a preliminary motion may dispose of the entire action.” *Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D.Fla.2003) (emphasis added).

The Court will now look at the *String Cheese* factors. In analyzing the propriety of a stay of discovery this Court acknowledges that there would be prejudice to the Plaintiff in delaying discovery. Plaintiff clearly opposes the motion to stay. With regard to the burden on Defendant, certainly there would be some burden, particularly additional burden with regard to claims which may be later dismissed. However, as discussed above, there has been no attempt to parse out what discovery might apply to specific claims, just a motion to completely stay discovery.

Convenience to the Court is not overly implicated in this circumstance. The Court is not being asked to expend extensive time undergoing such matters as *in camera* review of documents or the like. The Court expects that the parties will respectfully, responsibly and in a spirit of cooperation move through the discovery portion of this action.

As to the interests of third parties and the public interest, the last two of the five *String Cheese* factors, these do not seem to be implicated except in the most generic sense. There are no known third parties and this case, while important in the sense that all cases are, is of no great

individual public interest and does not appear to be of significant possible legal precedent. That being said, sometimes the most unlikely cases set significant future precedent.

Finally, as may have been presaged above, I find it appropriate, much like in a preliminary injunction posture where a party must show a substantial likelihood of prevailing on the merits, *see Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir. 1980), to give significant weight in this circumstance to Defendants' likelihood, or not, of prevailing on their Rule 12(b) motion. The more likely Defendant is to prevail at that initial stage, the greater the burden of having to proceed with discovery. Here, even if successful with regard to their motions, Defendants will still be defending against some claim(s).

Defendant has an interest, primarily financial, in staying the discovery. Plaintiff has an interest in seeing the action proceed expeditiously and getting the discovery it believes necessary for that purpose. Thus, the Court must fall back on the overriding principal that "[t]he right to proceed in court should not be denied except under the most extreme circumstances." *Commodity Futures Trading Com'n supra* at 1484. After reviewing all the facts and attendant circumstances, the Court cannot say that this is an extreme circumstance. Thus, the motion to stay discovery under these facts and circumstances is denied.

Dated at Grand Junction, Colorado, this October 30, 2016.



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Gordon P. Gallagher  
United States Magistrate Judge