

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MYLISSA FARMER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:24-CV-02335
)	
THE UNIVERSITY OF KANSAS)	
HOSPITAL AUTHORITY,)	
)	
Defendant.)	

**DEFENDANT UNIVERSITY OF KANSAS HOSPITAL AUTHORITY’S
REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY**

On September 17, 2024, Defendant filed a motion to stay discovery until the court ruled on the motion to suppress. (Dkt. 27). On October 9, 2024, Plaintiff filed an unpersuasive opposition in response. (Dkt. 33). There is no reason for the court to rush this case into discovery before deciding the motion to dismiss. It should instead do the prudent thing which is to hit the pause button on discovery by granting Defendant’s motion.

INTRODUCTION

The parties agree that a stay of discovery is appropriate where any *one* of the following factors applies: (1) “the case is likely to be finally concluded as a result of the ruling thereon;” (2) “the facts sought through uncompleted discovery would not affect the resolution of the motion;” or (3) “discovery on all issues of the broad complaint would be wasteful and burdensome.” (ECF No. 33, Plaintiff’s Resp. in Opp., p. 2 (quoting *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994)); *see also Logan v. Farmers New World Life Ins. Co.*, No. 22-2465-HLT-RES, 2022 WL 21815963, at *2 (D. Kan. Dec. 22, 2022) (“Granting a stay does not require that all of these factors are met.”). As detailed in Defendant’s motion, all of these factors weigh in favor of a stay, and Plaintiff’s response does not meaningfully suggest otherwise.

With respect to the first factor, Defendant has sufficiently shown that this case is likely to be finally concluded as a result of the ruling on the motion to dismiss. Indeed, as fully set out in Defendant's Motion to Dismiss, Defendant is entitled to dismissal of Plaintiff's claims in their entirety because Plaintiff's Complaint fails to state a valid claim under EMTALA or KAAD against UKHA. As to the second factor, Plaintiff does not dispute that the facts sought through discovery would not have any bearing on the resolution of the pending dispositive motion, which alone makes a stay of discovery appropriate. Lastly, examination of the third factor shows that discovery would be wasteful, burdensome, and prejudicial if the motion to dismiss was granted in whole or in part, and Plaintiff has not identified any countervailing prejudice she would suffer from a temporary stay. Therefore, this case qualifies for a stay of discovery under the well-settled principles of this District. *Wolf*, 157 F.R.D. at 495.

ARGUMENT AND AUTHORITIES

I. This case is likely to be resolved by Defendant's Motion to Dismiss.

As noted in Defendant's motion, Defendant is not required to prove—nor is this Court required to prejudge—how the District Judge will ultimately decide the motion to dismiss. Instead, the relevant inquiry is whether there is “enough likelihood” that this case will be resolved by the pending dispositive motion to warrant a stay of discovery. *Lofland v. City of Shawnee*, No. 16-cv-21830-CM-TJJ, 2016 U.S. Dist. LEXIS 128386, *2 (D. Kan. Sep. 20, 2016). Here, Defendant has raised at least three grounds for dismissal, and it is possible that the District Judge's ruling could dispose of some—if not all—of Plaintiff's claims. In her Response, Plaintiff appears to miss this point entirely, suggesting instead that Defendant is required to demonstrate “an extraordinary likelihood of success” on the pending motion to warrant a stay. (ECF No. 33, p. 5). Plaintiff provides no support for such a heightened standard and courts have already distinguished the Tenth Circuit case she does cite. *See Est. of Srader by & through Srader v. N. Navajo Med. Ctr.*, No. CV

23-32 MV-JHR, 2023 WL 4405122, at *1 (D.N.M. July 7, 2023). Plaintiff otherwise fails to meaningfully dispute that courts in this district have repeatedly found a stay to be warranted while a dispositive motion is pending while also withholding a fully analysis on the pending motions likelihood of success. *See, e.g., Escalante v. 10th Jud. Dist., Johnson Cnty., Kansas Dist. Ct.*, No. 24-CV-2235-TC-TJJ, 2024 WL 3771776, at *2 (D. Kan. Aug. 13, 2024); *Tomes v. LoanCare, LLC*, No. 222CV02421JWBKGG, 2023 WL 2784844, at *1 (D. Kan. Apr. 5, 2023); *Catron v. Colt Energy, Inc.*, No. 13-4073-CM-KGG, 2014 WL 2828683, at *1 (D. Kan. June 23, 2014).

While Plaintiff has made considerable effort to obfuscate the factual allegations and dispositive arguments at issue in the dispositive motion, Plaintiff's own request for a second chance at pleading should the Court find that dismissal is in fact warranted is most telling. (ECF No. 32, p. 25). While claiming here that Defendant has failed to demonstrate a likelihood of success on the motion, Plaintiff herself has seemingly conceded that there is at least some likelihood that the Court could dismiss her claims. Accordingly, this factor weighs in favor of a stay.

II. It is undisputed that discovery will not have any bearing on pending the motion to dismiss.

In her Response to Defendant's Motion to Stay, Plaintiff fails to articulate any reasonable argument on this factor, and the parties appear to agree that the facts sought through discovery would not aid resolution of the pending dispositive motion. This alone is an adequate basis to stay discovery and likewise weighs in favor of a stay. *Wolf*, 157 F.R.D. at 495; *Escalante*, 2024 WL 3771776, at *2.; *Est. of Srader*, 2023 WL 4405122, at *1 (stay appropriate when "Plaintiffs [do not] explain why they need such fact discovery before the motion to dismiss is decided."); *McDaniel v. Lakeview Vill., Inc.*, No. 23-CV-2090-TC-TJJ, 2023 WL 4198601, at *1 (D. Kan. June 27, 2023) (granting a stay when "Plaintiff has not indicated he needs any discovery that would affect the ruling on the motion to dismiss").

III. Discovery would be wasteful, burdensome, and unduly prejudicial.

The third factor is arguably the most compelling factor weighing in favor of a stay. Notably, Plaintiff does not appear to dispute that discovery would be wasteful if the pending dispositive motion is granted. Instead, Plaintiff contends that Defendant has failed to make an adequate showing of prejudice to warrant a stay. As highlighted in Defendant's motion, there is an ample risk of prejudice here to warrant a stay of discovery given the nature of the subject matter at issue and the constant publicity surrounding these proceedings. Proceeding with discovery while the Motion to Dismiss is pending risks fruitless discovery, potential motion practice, and unnecessary time, effort, and resources by the parties, their counsel, and the Court. Such burdens are unjustified where these efforts are likely to be found unnecessary given the merits of the pending dispositive motion. As such, this factor also weighs in favor of a stay of discovery.

CONCLUSION

Defendant demonstrates three factors are met to warrant a stay pending resolution when all that is required is to meet one. There is no reason to rush into discovery when that is the case. The court should exercise prudence by staying discovery until the motion to dismiss is resolved.

Respectfully submitted,

SIMPSON, LOGBACK, LYNCH, NORRIS, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy was sent via electronic mail to the following:

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