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8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 PATRICK STEPHEN DAVIS,
11 Plaintiff,
12 v.
13 STATE OF NEVADA ET AL.;
14 Defendants.

Case No.: 3:13-cv-00559-MMD-WGC

MOTION FOR PROTECTIVE ORDER
TO STAY DISCOVERY

Attorney General's Office
Department of DMV/DPS
555 Wright Way
Carson City, NV 89711

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16 Defendants the State of Nevada, Nevada Board of Parole Commissioners, Nevada
17 Department of Public Safety, Nevada Division of Parole and Probation, Connie Bisbee, James
18 Wright, Bernard Curtis, Claudia Steiber, Natalie Wood, Claudia Cole, Aaron Evans, James
19 Gothan, James Sackett and Nevada Attorney General Catherine Cortez Masto, through their
20 attorneys, CATHERINE CORTEZ MASTO, Attorney General, and LORI M. STORY, Deputy
21 Attorney General, move this Court for a Protective Order staying discovery pending a decision
22 on the Motion to Dismiss. The motion is made pursuant to Fed. R. Civ. P. 26(c) and is based
23 on the attached Points and Authorities and all other papers and pleadings filed therein.

24 **I. INTRODUCTION**

25 Defendants seek a protective order pursuant to Fed. R. Civ. P. 26(c), to stay discovery
26 pending a ruling on Defendants' Motion to Dismiss.

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1 **II. BACKGROUND**

2 Plaintiff Patrick S. Davis brings an action against the aforementioned Defendants
 3 based on various directives and occurrences resulting from Plaintiff's status as a sex offender
 4 subject to Lifetime Supervision. Plaintiffs alleges violations of The First, Fourth, Fifth, Sixth,
 5 Eighth and Fourteenth Amendments, (Compl. (ECF No.1) at 55-92). Plaintiff further alleges
 6 violations of 42 U.S.C. §§ 1981, 1985, 1986 and 1988 and state and federal law. Plaintiffs
 7 seek monetary damages including compensatory, punitive and exemplary damages in an
 8 amount of at least \$100,000.00 *Id.* at 93-113). Plaintiff also seeks declaratory and injunctive
 9 relief. *Id.* at 114-115. Defendants moved to dismiss the complaint on various grounds
 10 including statute of limitations issues, sovereign and qualified immunity and failure to state a
 11 justiciable claim. That motion is pending for decision before this Court.

12 **III. ARGUMENT**

13 **A. A Protective Order Should Issue and Discovery Should be Stayed Pending**
 14 **A Ruling on Defendants' Motion to Dismiss.**

15 District courts have the power to prescribe time limits for conducting discovery,
 16 *Whittaker Corp. v. Execuair Corp.*, 736 F.2d 1341, 1347 (9th Cir. 1984), and a district court's
 17 decision to allow or deny discovery is reviewable only for abuse of discretion. *Volk v. D.A.*
 18 *Davidson & Co.*, 816 F.2d 1406, 1416-17 (9th Cir. 1987); *Munoz-Santana v. INS*, 742 F.2d
 19 561, 562 (9th Cir.1984). A protective order under Rule 26(c) to stay discovery pending
 20 determination of a dispositive motion is an appropriate exercise of the court's discretion.
 21 *Chavous v. District of Columbia Financial Resp. and Mgmt. Asst. Auth.*, 201 F.R.D. 1, 2
 22 (D.D.C. 2001); *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C.
 23 1988). A district court may limit discovery "for good cause", and may continue to stay
 24 discovery when it is convinced that the plaintiff will be unable to state a claim for relief. *B. R.*
 25 *S. Land Investors v. United States*, 596 F.2d 353 (9th Cir. 1978); *Wood v. McEwen*, 644 F.2d
 26 797 (9th Cir. 1981) (a defendant may challenge the legal sufficiency of a complaint's
 27 allegations before being subjected to discovery procedures); *and see Munoz-Santana v. INS*,
 28 742 F.2d 561, 562 (9th Cir.1984) (discovery stayed pending the disposition of the motions to

1 dismiss, on the ground that discovery was not required to address the issues raised by
2 defendants' motions to dismiss); *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727
3 (1982) (discovery should not be allowed in cases where a defense of qualified immunity is
4 raised “[u]ntil th[e] threshold immunity question is resolved.”); *see also Anderson v. Creighton*,
5 483 U.S. 635, 645, 107 S.Ct. 3034, 3042, n.6 (1986).

6 Defendants' Motion to Dismiss raised various defenses which should be considered
7 before commencing discovery. In particular, the immunity defenses should act as immunity
8 from suit, not just from damages, *see Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806
9 (1985); *Liberal v. Estrada*, 632 F.3d 1064, 1074 (9th Cir. 2011); *Meuller v. Auker*, 576 F.3d
10 979, 992-93 (9th Cir. 2009), and the expiration of the statute of limitations prevents the Court
11 from obtaining jurisdiction to hear expired claims, *Edwards v. United States*, 163 F.3d 268 (9th
12 Cir. 1947). Thus, as the foregoing authorities suggest, the Defendants should not be required
13 to engage in discovery unless and until the Court determines whether the claims in the
14 Complaint state claims for relief and whether the named defendants should be required to
15 answer those claims or are immune from suit.

16 Because Defendants argued that certain claims fail as a matter of law, no discovery is
17 necessary by Plaintiff in order to oppose the motion. Further, if discovery is allowed to
18 proceed while the Defendants' motion is pending, the parties would be wasting valuable
19 resources propounding and responding to requests regarding claims which may ultimately be
20 dismissed. Defendants do not dispute that Plaintiff is entitled to conduct discovery on any
21 viable claims; however, prudence and controlling decisional law provide that Defendants
22 should not be subjected to discovery while a dispositive motion is pending which will likely
23 affect which of the claims in the Complaint may proceed.

24 Accordingly, Defendants argue a protective order should be granted and discovery
25 should be stayed until a ruling on Defendants' Motion to Dismiss is issued.

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IV. CONCLUSION

For all the foregoing reasons Defendants respectfully request the Motion for Protective Order be GRANTED.

DATED this 29th day of January, 2014.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Lori M. Story
LORI M. STORY
Deputy Attorney General

Attorneys for Defendants


Attorney General's Office
Department of DMV/DPS
555 Wright Way
Carson City, NV 89711

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY addressed to:

PATRICK S. DAVIS
456 MICHELE WAY
SPARKS, NEVADA 89431

DATED this 29th day of January, 2014.


An Employee of the State of Nevada

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Department of DMV/DPS
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