

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

Civil Action No. 14-cv-03111-REB-KLM

JULIE REISKIN,  
JON JAIME LEWIS,  
WILLIAM JOE BEAVER,  
DOUGLAS HOWEY,  
DIANA MILNE,  
TINA MCDONALD,  
JOSÉ TORRES-VEGA,  
RANDY KILBOURN,  
JOHN BABCOCK, and  
COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit corporation,

Plaintiffs,

v.

REGIONAL TRANSPORTATION DISTRICT, a/k/a RTD, a political subdivision of the  
State of Colorado

Defendant.

---

**DEFENDANT RTD'S MOTION TO STAY DISCOVERY**

---

Pursuant to Fed. R. Civ. P. 26(c), Defendant Regional Transportation District ("RTD") hereby moves to stay discovery until such time as the Court issues an order concerning RTD's Motion for Partial Dismissal, ECF No. 39, or so long as Plaintiff CCDC and its counsel represent Plaintiffs.

**D.C.COLO.LCivR 7.1(a) CERTIFICATION**

Pursuant to D.C.Colo.LCivR 7.1(a), RTD states that it conferred with Plaintiffs' counsel CCDC Legal Program Director Kevin Williams on March 3, 2015, regarding

RTD's motion for a stay. Mr. Williams stated that Plaintiffs oppose a stay of discovery for the same reasons that Plaintiffs also oppose RTD's Motion for Partial Dismissal.

## **I. BACKGROUND**

Plaintiff CCDC, a nonprofit corporation advocating for the legal rights of the disabled, is one of several Plaintiffs that have filed this lawsuit against Defendant RTD, the Denver region's public mass transit provider. In 2014, RTD fully resolved its legal disputes with CCDC and three individual Plaintiffs Reiskin, Howey, and Lewis when they executed a settlement agreement that contained a general release and a covenant not to sue or encourage litigation. See *CCDC v. RTD*, No. 13-cv-02760-PAB-MJW (D. Colo. 2013), ECF Nos.1, 19-1.

Nine months later, CCDC and several of the same CCDC employees and members filed this class action alleging RTD violated the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA") and Section 504 of the Rehabilitation Act in not providing sufficient space for passengers using wheelchairs to board light rail vehicles. Pursuant to Fed. R. Civ. P. 12(b)(6), RTD moved to dismiss those claims on the grounds that the claims brought by CCDC, Reiskin, Howey, and Lewis were barred by the releases in the 2014 settlement agreement. RTD's Mot. to Dismiss, Or, In the Alternative, For Summary Judgment, ECF No. 19. Plaintiffs amended the Complaint to add individual plaintiffs and additional facts, namely that the conduct occurred "both before and after the last twelve months." Amended Complaint, ECF No. 31, ¶¶ 48, 55, 67. Plaintiffs also added a third claim. *Id.* at ¶¶ 206-209. Pursuant to Fed. R. Civ. P. 12(b)(6), RTD has moved for a partial dismissal of the First and Second Claims by Plaintiffs CCDC, Reiskin,

Howey, and Lewis because their claims are barred by the release in the settlement agreement and of the Third Claim as to all plaintiffs because C.R.S. § 13-17-101 *et seq.* does not allow a substantive claim for relief. RTD's Mot. for Partial Dismissal, ECF No. 39.

Pursuant to Fed. R. Civ. P. 26(c), RTD now moves for the Court to stay discovery pending resolution of RTD's Motion for Partial Dismissal or so long as CCDC and its counsel represent Plaintiffs.

## II. ARGUMENT

This court has the discretion to permit a stay of discovery pursuant to Fed. R. Civ. P. 26(c). *String Cheese Incident, LLC v. Stylus Shows, Inc.*, 2006 WL 894955, at \*2, No. 02-cv-01934-LTB-PA (D. Colo. Mar. 30, 2006) (granting a 30-day stay of discovery pending a motion to dismiss). The party seeking the stay must make a "particular and specific demonstration of fact" in support of the request. *Trs. of Springs Transit Co. Emp.'s Ret. and Disability Plan v. City of Colo. Springs*, 2010 WL 1904509, at \*4, No. 09-cv-02842-WYD-CBS, (D. Colo. May 11, 2010). Stays are generally disfavored. *Wells v. Smith*, 2014 WL 6886719, at \*2, No. 12-cv-00447-WJM-KLM (D. Colo. Dec. 8, 2014). However, a stay on the merits may be appropriate in certain circumstances. *Stone v. Vail Resorts Dev. Co.*, 2010 WL 148278, at \*1, No. 09-CV-02081-WYD-KLM (D. Colo. Jan. 7, 2010). In determining the propriety of a stay, this court applies the following factors:

- (1) Plaintiffs' interests in proceeding expeditiously with the action and the potential prejudice to Plaintiffs resulting from a delay;
- (2) the burden on the Defendants;
- (3) the convenience of the Court;
- (4) the interests of persons not parties to the litigation; and
- (5) the public interest.

*Wells*, 2014 WL 6886719, \*2 (citing *String Cheese Incident*, 2006 WL 894955, at \*2).

In this case, if RTD's Motion for Partial Dismissal were granted, CCDC would be dismissed from the case and CCDC's in-house legal counsel could no longer represent the remaining plaintiffs or potential class because allowing CCDC's counsel to proceed with this case is tantamount to allowing CCDC to proceed. By representing Plaintiffs, if Plaintiffs were to prevail, CCDC's counsel presumably could claim attorneys' fees based upon claims CCDC knowingly and voluntarily released in a prior settlement agreement. Allowing CCDC's counsel to represent the class renders the settlement agreement meaningless and sends a message that CCDC's release of claims is virtually worthless as long as CCDC maintains a supply of additional affiliates and associates to represent or join a class. Therefore, because RTD's Motion for Partial Dismissal argues that CCDC and its counsel should not properly represent the potential plaintiff class, RTD seeks a stay of discovery pending determination of RTD's Motion for Partial Dismissal, or so long as CCDC and its counsel represent Plaintiffs.

In applying the *String Cheese Incident* factors, a stay pending resolution of the motion is warranted. If RTD's motion is granted and CCDC and its counsel are dismissed from the case, the new class counsel will have an opportunity to conduct its own discovery. Consequently, both the remaining Plaintiffs and RTD will not be prejudiced in having to conduct costly discovery twice and their ability to fully engage in discovery will not be hindered. A stay pending resolution of the motion serves the interests of both parties, and advances the Court's interest in promoting judicial economy and the taxpayers' interest in cost effective use of public funds to litigate this case.

**1. A STAY PROTECTS THE PLAINTIFFS' INTERESTS AS MUCH AS IT PROTECTS RTD.**

In accordance with Fed. R. Civ. P. 1, Plaintiffs undeniably have a significant interest in the just, speedy, and fair resolution of the case and therefore, Plaintiffs would be prejudiced by any delay in adjudication of the case. See *Samuels v. Baldwin*, 2015 WL 232121, at \*2, No. 14-cv-02588-LTB-KLM (D. Colo. Jan. 16, 2015). However, if CCDC and its counsel are removed from the case, the remaining Plaintiffs likely will seek new counsel and discovery in this case should be stayed to allow new counsel to have an opportunity to conduct discovery.

This case is comparable to a motion to disqualify counsel. In the District of Kansas, a court issued a stay of discovery pending resolution of a motion to disqualify plaintiff's counsel. See *Williams v. KOPCO, Inc.*, 162 F.R.D. 670, 672 (D. Kan. 1995). Similarly here, the Court should focus on first determining who should represent the class before moving ahead with discovery. Allowing CCDC and its counsel to conduct discovery will delay adjudication of the claims and prejudice the potential class.

Importantly, discovery – and discovery disputes – may be repeated by a new lawyer. For example, if CCDC's in-house counsel were to notice and take RTD's deposition pursuant to Fed. R. Civ. P. 30(b)(6), a new lawyer representing the class likely would want to take the deposition again on different issues. In addition, different lawyers may pursue different theories and certainly will have competing claims for attorneys' fees.

Moreover, a stay will not prejudice Plaintiffs because it is temporary and would not hinder their ability to fully engage in discovery. See *Namoko v. Milgard Mfg., Inc.*, No. 06-cv-02031-WDM-MEH, 2007 WL 1063564, at \*2 (D.Colo. April 6, 2007) (finding no undue prejudice to plaintiff where stay does not "hinder ... future ability to fully engage in

discovery”). In fact, by having a clear understanding of which attorneys will represent Plaintiffs gives the potential class a greater opportunity to fully engage in discovery. Therefore, Plaintiffs could be prejudiced if the stay is **not** imposed.

## **2. ALLOWING CCDC TO PROCEED WITH DISCOVERY CREATES AN UNDUE BURDEN ON RTD.**

The second factor weighs heavily in favor of a stay because this is a class action and discovery in class actions are undeniably costly for a defendant. *See Stone*, 2010 WL 148278, at \*2 (“While Plaintiffs are correct that the ordinary burdens associated with litigating a case do not constitute undue burden . . . complying with Plaintiffs’ [class action] discovery requests would impose on Defendants more than the ordinary burdens of litigation.”); *see also*, Lynch, Kevin J., *When Staying Discovery Stays Justice: Analyzing Motions to Stay Discovery When a Motion to Dismiss Is Pending*, 47 WAKE FOREST L. REV. 71, 74-75 (Spring 2012) (identifying costs of discovery). It would be an undue burden on RTD to engage in discovery with CCDC as counsel and then engage in new discovery with new counsel for the class. As a result, proceeding with discovery would be an undue burden on RTD.

## **3. A STAY IS CONVENIENT FOR THE COURT.**

Without a stay, this Court likely will have expended resources managing a complex class action case unnecessarily. New counsel may have completely different theories of the case that will require additional court resources to resolve. “[If] the case remains ‘in a stagnant state’ on the Court’s docket due to a stay, judicial economy is enhanced, as is convenience to the Court.” *Samuels*, 2015 WL 232121, at \*3 (citing *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 5 (D.D.C.2001)). As in *Samuels*,

the Court can devote its time to addressing the pending dispositive motion rather than policing discovery. *Id.* Accordingly, the third factor weighs in favor of a stay.

#### **4. THE PUBLIC IS A CRITICAL THIRD PARTY.**

The last two factors are combined for this case because the affected non-parties to litigation **are** the public. RTD is a political subdivision of the state of Colorado. The resources that RTD expends to respond to discovery and engage in discovery disputes with CCDC as counsel are the taxpayers' funds. RTD has an obligation to judiciously spend its resources. The funds RTD spends in costly discovery of this potential class action are funds that could otherwise be spent providing the public additional transit services – or making transit more accessible to the disabled. For that reason, the fourth and fifth factors weigh in favor of a stay.

### **III. CONCLUSION**

For the reasons set forth above and pursuant to Fed. R. Civ. P. 26(c), RTD respectfully requests that CCDC's involvement discovery be stayed until such time as the court issues an order concerning RTD's Motion for Partial Dismissal or so long as CCDC and its counsel represent Plaintiffs.

Respectfully submitted this 5th day of March 2015.

**REGIONAL TRANSPORTATION DISTRICT**

By: /s/ Jenifer M. Ross-Amato

Jenifer Ross-Amato, No. 34665

Mindy Marie Swaney, No. 47828

1600 Blake Street

Denver, CO 80202

Tel: (303)-299-2479

Email: [jenifer.ross@rtd-denver.com](mailto:jenifer.ross@rtd-denver.com)

Email: [mindy.swaney@rtd-denver.com](mailto:mindy.swaney@rtd-denver.com)

*This document was filed electronically.*

*The original document and signature are  
on file in the undersigned attorney's  
office.*



### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO STAY DISCOVERY was served on March 5, 2015 via email addressed to:

Kevin W. Williams [kwilliams@ccdonline.org](mailto:kwilliams@ccdonline.org)

Andrew C. Montoya [amontoya@ccdonline.org](mailto:amontoya@ccdonline.org)

Colorado Cross-Disability Coalition

*/s/ Jenifer Ross-Amato*

\_\_\_\_\_  
Jenifer Ross-Amato

*This document was filed electronically. The original document and signature are on file in the undersigned attorney's office.*