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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LISA MCALLISTER, an individual; and
BRANDOM SUMMERS, an individual,

Plaintiffs,

vs.

CLARK COUNTY, a political subdivision
of the state of Nevada.

Defendant(s).

Case No: 2:24-cv-00334

**DEFENDANT CLARK COUNTY'S
MOTION TO STAY DISCOVERY**

Defendant CLARK COUNTY, by and through its counsel of record, hereby files this
Motion to Stay Discovery.

This Motion is made and based upon the attached Memorandum of Points and
Authorities, all papers and pleadings on file herein, and oral arguments permitted by the Court
at a hearing on the matter, if any.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

NATURE OF MOTION

Procedural Posture

Plaintiffs filed their complaint on or around February 16, 2014. [ECF No. 1]. The complaint alleged three facial challenges to Clark County Code section 16.13.030 (“CCC 16.13.030”) asserting that the ordinance is unconstitutionally vague, unconstitutionally overbroad, and that the ordinance violates the Americans with Disabilities Act (“ADA”). *See generally id.* Neither named Plaintiff in this suit has been cited under CCC 16.13.030. *Id.* On February 22, 2024, Plaintiffs filed motions for preliminary injunction and for temporary restraining order seeking to enjoin enforcement of the ordinance. [ECF Nos. 4, 5].

Defendant Clark County filed a motion to dismiss [9] Plaintiffs’ complaint [1] on or around March 14, 2024. [ECF No. 9]. Clark County also filed a response to Plaintiffs’ motions for preliminary injunction and TRO [4, 5] the same day. [ECF No. 10].

Plaintiffs have filed their response [17] to Defendant’s motion to dismiss [9] and reply in support [15] of their motions for preliminary injunction and TRO [4, 5]. Only Clark County’s reply in support of its motion to dismiss [9] remains outstanding.

The Court has yet to rule on Plaintiffs’ motions for preliminary injunction and TRO [4, 5] or Defendant’s motion to dismiss [9].

On or around March 29, 2024, counsel for Plaintiffs reached out to defense counsel seeking a date to conduct a Rule 26(f) conference to prepare a discovery plan and scheduling order in this matter. Because this case involves three questions of law and no factual issues, it was Defendant’s position that no such conference or discovery plan was necessary. Defendant indicated that it would seek clarity on this issue from the court by filing a motion to stay.

Good Cause for Stay

A court may stay discovery under Federal Rule of Civil Procedure 26(c) when good cause exists. Fed. R. Civ. P. 26(c)(1) (the court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,”

1 including forbidding discovery or specifying when it will occur); *see also Clardy v. Gilmore*,
 2 773 F. App'x 958, 959 (9th Cir. 2019) (affirming stay of discovery under Rule 26(c)).

3 There is good cause for granting a stay in this case pursuant to Rule 26(c) because
 4 Plaintiffs' complaint contains three questions of law that require no discovery to resolve and
 5 Defendant's motion to dismiss [9] is dispositive of all issues raised in the complaint. *See*
 6 *generally* [ECF No. 1]; [ECF No. 9].

7 Defendant also believes that good cause exists warranting a stay under the "preliminary
 8 peek" standard because Plaintiffs cannot state a claim for relief on a disfavored facial challenge
 9 to CCC 16.13.030. However, as those substantive issues are already before the Court in the
 10 pending motions for TRO and preliminary injunction [4, 5] and motion to dismiss [9], and
 11 good cause can be established without an analysis of the merits, Defendant will not re-hash
 12 those issues here.

13 II.

14 STANDARD OF REVIEW

15 While the Ninth Circuit has not articulated a bright line rule on how to apply Rule 26(c)
 16 to a motion to stay, it has identified scenarios where a stay under Rule 26(c) is either
 17 appropriate or inappropriate. *See, e.g., Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981);
 18 *Alaska Cargo Transp., Inc. v. Alaska R.R. Corp.*, 5 F.3d 378, 383 (9th Cir. 1993).

19 This court has articulated an analytical framework for determining when motions to
 20 stay should be granted in other cases involving this defendant. *See, e.g.,* Order in Case No.
 21 2:20-cv-02122-RFB-BNW, attached hereto as **Exhibit A**, at 5:15-27. This framework
 22 provides that that a motion to stay may be granted where: (1) the dispositive motion can be
 23 decided without further discovery; and (2) good cause exists to stay discovery. *Id;* *see also*
 24 *Alaska Cargo Transp.*, 5 F.3d at 383 (district court would have abused its discretion in staying
 25 discovery if the discovery was necessary to decide the dispositive motion); Fed. R. Civ. P.
 26 26(c)(1) (the Court "may, for good cause, issue an order to protect a party or person from
 27 annoyance, embarrassment, oppression, or undue burden or expense," including forbidding
 28 discovery or specifying when it will occur).

1 III.

2 LEGAL ARGUMENT

3 **1. Questions of Law like the Constitutionality or Validity of Local Ordinances do**
 4 **not Require Discovery to Resolve**

5 Plaintiffs LISA MCALLISTER and BRANDON SUMMERS, neither of whom who
 6 have ever been cited under CCC 16.13.030, bring this action asserting that CCC 16.13.030 is
 7 unconstitutional on its face under the First and Fifth Amendments (and their Nevada State
 8 Constitutional equivalents) and that the language of CCC 16.13.030 violates the Americans
 9 with Disabilities Act (“ADA”). *See generally* [ECF No. 1].

10 Facial challenges to the constitutionality of ordinances are questions of law. *See, e.g.,*
 11 *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 920 (9th Cir. 2004) (“The
 12 constitutionality of a state statute is a question of law”); *Eakins v. Nevada*, 219 F. Supp. 2d
 13 1113, 1114 (D. Nev. 2002) (“The case [...] is a facial challenge to NRS 199.325, and it is
 14 before the court on cross motions for summary judgment. Because the case concerns a question
 15 of law and there being no dispute concerning the facts, it is unnecessary to delve into the
 16 factual scenarios each plaintiff brings to the court.”).

17 It is well settled that questions of law are within the purview of the Court and that no
 18 additional discovery is necessary to resolve such issues. *See, e.g., Doherty v. Wireless Broad.*
 19 *Sys. of Sacramento, Inc.*, 151 F.3d 1129, 1131 (9th Cir. 1998) (recognizing that “[t]he district
 20 court concluded that Pacific did not need to undertake discovery because the issue in this case
 21 involved a purely legal question.”); *Shelby County v. Holder*, 270 F.R.D. 16, 19 (D.D.C. 2010)
 22 (“Because Shelby County brings only a facial challenge to the [Voter Registration Act],
 23 discovery into that claim is unwarranted.”); *Briggs v. Yi*, No. 3:22-CV-00265-SLG, 2023 WL
 24 2914395, at *5 (D. Alaska Apr. 12, 2023) (“Mr. Briggs’ facial challenge to the
 25 constitutionality of AMC 8.30.120(A)(2) is a pure question of law and Mr. Briggs has not
 26 identified any discoverable facts that would be relevant to resolving this question.”).

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1 As this case involves pure questions of law that can be determined by the court without
2 the need for additional discovery, good cause exists for staying the case pursuant to Rule 26©
3 of the Federal Rules of Civil Procedure.

4 **2. Good Cause Exists to Grant a Stay of Discovery because the Pending Motion**
5 **to Dismiss is Entirely Dispositive of all Claims and Any Potential Discovery**
6 **would Constitute an Undue Burden or Expense**

7 Under Federal Rule of Civil Procedure 26(c), the court may limit the scope of discovery
8 upon a showing of good cause or where “justice requires to protect a party or person from
9 annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 12;
10 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011).

11 Here the questions of law raised in Plaintiffs’ complaint are the only claims contained
12 therein and Defendant’s pending motion to dismiss [9] is entirely dispositive of these claims.
13 Furthermore, as these issues constitute questions of law on which the Court can rule without
14 additional discovery, any discovery in this case would be a per se unnecessary burden and
15 expense on the Defendant.

16 Avoiding this unnecessary burden and expense constitutes good cause and,
17 accordingly, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure the Court should
18 stay this case pending a determination on Defendant Clark County’s Motion to Dismiss.

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IV.

CONCLUSION

Based on the foregoing, Defendant humbly requests the Honorable Court grant the instant motion to stay discovery pending a decision on Defendant Clark County's motion to dismiss [9].

DATED this 3rd day of April, 2024.

STEVEN B. WOLFSON
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 3rd day of April, 2024, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY'S MOTION TO STAY DISCOVERY** (United States District Court Pacer System or the Eighth Judicial District Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

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