

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

PEGGY LYNN LUNDINE,  
on behalf of herself and others  
similarly situated,

Plaintiff,

Case No. 18-1235-EFM

v.

GATES CORPORATION,

Defendant.

**ORDER**

The parties submitted their second planning meeting report on January 14, 2020, and jointly requested a stay of discovery in light of a pending dispositive motion. On November 6, 2019, defendant filed a motion to strike opt-in plaintiff Hannah Arnold, arguing she is not a class member because she was a temporary contract worker and not an employee (ECF No. 50). The motion has been fully briefed and is pending before the presiding U.S. District Judge, Eric F. Melgren. The parties ask the undersigned U.S. Magistrate Judge, James P. O'Hara, to stay discovery until after Judge Melgren rules because that ruling will necessarily affect the timing and scope of discovery. For the following reasons, the undersigned grants the parties' request.

## Analysis

It has long been the general policy in the District of Kansas not to stay discovery merely because a dispositive motion has been filed.<sup>1</sup> However, there are four recognized exceptions to this policy. That is, a discovery stay may be appropriate if at least one of these factors is present: (1) the case is likely to be finally concluded via the dispositive motion; (2) the facts sought through discovery would not affect the resolution of the dispositive motion; (3) discovery on all issues posed by the complaint would be wasteful and burdensome; or (4) the dispositive motion raises issues as to a defendant's immunity from suit.<sup>2</sup> The decision whether to stay discovery rests in the sound discretion of the court.<sup>3</sup>

The undersigned has reviewed the record, the pending motion to strike, and the parties' second planning meeting report, and concludes a stay of pretrial proceedings is warranted. The amount of time needed for discovery will largely depend on how Judge Melgren rules on the motion to strike. If the motion is granted, discovery will begin when the parties submit their third planning meeting report and a scheduling order is entered. On the other hand, if the motion is denied, discovery will be delayed because notice will be mailed out to additional identified putative class members. Those additional putative class

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<sup>1</sup> See *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994).

<sup>2</sup> *Lofland v. City of Shawnee, Kansas*, No. 16-CV-2183-CM-TJJ, 2016 WL 5109941, at \*1 (D. Kan. Sept. 20, 2016); *Fattaey v. Kansas State Univ.*, No. 15-9314-JAR-KGG, 2016 WL 3743104, at \*2 (D. Kan. July 13, 2016).

<sup>3</sup> *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

members will have a deadline to join the case as opt-in class members. The number of new class members added to this action will in turn impact the time needed to conduct remaining discovery.

As reflected in the parties' second planning meeting report, their proposed discovery plan is also dependent on the outcome of the motion to strike in other ways. That ruling will likely impact the number and scope of interrogatories, as well as the number and location of depositions allowed. The undersigned is persuaded the pretrial deadlines and scheduling order will be strongly impacted by the ruling on the motion to strike. The parties have conferred in good faith and have demonstrated it would be wasteful and burdensome to begin discovery without the benefit of the ruling on the motion to strike.

All pretrial proceedings in this case are stayed until further order of the court. Should Judge Melgren grant the motion to strike, the parties shall confer and submit an updated Rule 26(f) planning meeting report to the undersigned's chambers within 5 days of the ruling. Should Judge Melgren deny the motion to strike, the parties shall confer and submit an updated Rule 26(f) planning meeting report to the undersigned's chambers within 5 days of the expiration of the new opt-in notice period.

IT IS SO ORDERED.

Dated January 16, 2020, at Kansas City, Kansas.

s/ James P. O'Hara  
James P. O'Hara  
U.S. Magistrate Judge