

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

Civil Action No. 21-cv-01348-WJM-NYW

SHAT ACRES HIGHLAND CATTLE, LLC,¹
JANET STEWARD, and
RAY SHATNEY,

Plaintiffs,

v.

AMERICAN HIGHLAND CATTLE ASSOCIATION (AHCA),
JACQUELYN CHOTKOWSKI, individually and as a member of AHCA,
LAURA MCDOWELL-MAY, individually and as a member of AHCA,
SPRING FLIGHT FARM LLC, and
SEAWIND MEADOWS LLC,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE AND ORDER

Magistrate Judge Nina Y. Wang

This matter comes before the court on the Defendants' Unopposed Motion for Temporary Stay of All Proceedings Pending Mediation ("Motion to Stay") [#28, filed July 8, 2021], which has been referred to the undersigned pursuant to 28 U.S.C. § 636(b), the Order Referring Case dated May 19, 2021 [#4], and the Memorandum dated July 12, 2021 [#29].

¹ This court notes that the case caption in this matter appears to reflect a typographical error. The Clerk of the Court is **DIRECTED to AMEND** the case caption to reflect the proper spelling of Plaintiff "Shat Acres Highland Cattle, LLC" as that Party's name is listed on the Civil Cover Sheet. *Compare* [#1 at 1 (listing "Shat Acres Higland Cattle, LLC")] *with* [#1-1 (listing Plaintiffs as including "Shat Acres Highland Cattle LLC")] (emphases added).

Upon careful review of the Motion to Stay and the Parties' Response [#32] to this court's Order to Show Cause [#30], the docket, and applicable law, this court **GRANTS IN PART** and **DENIES IN PART** the Motion to Stay, and respectfully **RECOMMENDS** that this matter be **ADMINISTRATIVELY CLOSED** pending mediation.

BACKGROUND

Plaintiffs Shat Acres Highland Cattle, LLC ("Shat Acres"), Janet Steward, and Ray Shatney (collectively, "Plaintiffs") initiated this action against Defendants American Highland Cattle Association ("AHCA"), Jacquelyn Chotkowski ("Ms. Chotkowski"), Laura McDowell-May ("Ms. McDowell-May"), Spring Flight Farm LLC, and Seawind Meadows LLC (collectively, "Defendants") in the United States District Court for the District of Colorado on May 17, 2021. *See generally* [#1]. This action was directly assigned to the honorable William J. Martinez and drawn to the undersigned Magistrate Judge. [#2]. Judge Martinez subsequently referred this matter to the undersigned pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72. *See* [#4].

In their Complaint, Plaintiffs assert claims for breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, tortious interference, trade libel, violations of federal antitrust law, and violations of Vermont state consumer protections laws against all Defendants; defamation per se against AHCA, Ms. Chotkowski, and Ms. McDowell-May; and intentional infliction of emotional distress against Ms. Chotkowski and Ms. McDowell-May. *See generally* [#1].

On July 8, 2021, Defendants filed the instant Motion to Stay. [#28]. Therein, Defendants request a temporary stay of all proceedings in this matter—including the Scheduling Conference, upcoming deadlines for Defendants to answer or otherwise

respond to Plaintiffs' Complaint, and discovery deadlines—"for 100 days" to enable the Parties to engage in mediation as required by the AHCA's Rules and Regulations. [#28 at 1–3]; *see also* [#28-1 (ACHA Rules and Regulations)]. On July 14, 2021, this court ordered the Parties to show cause, in writing, as to why it should not recommend that this matter be administratively closed, rather than stayed, pending mediation between the Parties. [#30]. The Parties responded to the Order to Show Cause two days later, stating no opposition to administrative closure. [#32].

LEGAL STANDARD

Administrative closure pursuant to D.C.COLO.LCivR 41.2 may be appropriate when a case would otherwise be stayed for an indefinite amount of time, subject to reopening for good cause. *See, e.g., Hartford Life and Accident Ins. Co. v. Nickal*, No. 17-cv-02556-MSK-MJW, 2018 WL 1173150, at *1 (D. Colo. Mar. 6, 2018) (finding administrative closure appropriate because it was unclear when a parallel criminal proceeding would be adjudicated). It is a way for the court to manage its docket by "shelv[ing] pending, but dormant, cases[]" without a final adjudication. *See Lehman v. Revolution Portfolio LLC*, 166 F.3d 389, 392 (1st Cir. 1999). Demonstrating good cause to reopen an administratively closed matter is not onerous; rather, "good cause to reopen a case exists where the parties wish to litigate the remaining issues that have become ripe for review." *Patterson v. Santini*, 631 F. App'x 531, 534 (10th Cir. 2015) (quotations omitted); *see also Frederick v. Hartford Underwriters Ins. Co.*, No. 11-CV-02306-RM-KLM, 2015 WL 1499662, at *1 (D. Colo. Mar. 27, 2015) ("Here, Defendant seeks a determination of the parties' rights and claims. Thus, good cause exists to reopen the matter." (internal citations omitted)).

ANALYSIS

The Parties have agreed to participate in mediation and, according to Defendants, anticipate that completion of mediation will be a months-long process (although “the mediation itself could be completed in one day”). [#28 at ¶ 5]. Defendants further explain that counsel for both Parties “have been discussing potential mediators through JAMS and JAG, Inc. and intend on engaging the services of an agreed to [sic] mediator within the next two or three weeks.” [*Id.* at ¶ 6].² Given the indefinite timing of the mediation process and the potential that such mediation could resolve all outstanding issues between the Parties, administrative closure pursuant to D.C.COLO.LCivR 41.2 is appropriate, subject to reopening for good cause. *See, e.g., Patterson*, 631 F. App'x at 534 (citing *SEC v. Halek*, 537 F. App'x 576, 578 (5th Cir. 2013) (administrative closure appropriate when parties have reached conditional settlement of claims)); *Dab Drilling, Inc. v. Dabovich*, No. 18-CV-01197-WJM-NRN, 2020 WL 6262997, at *1–2 (D. Colo. Jan. 29, 2020) (recommending administrative closure pending the resolution of settlement negotiations), *report and recommendation adopted*, 2020 WL 6262998 (D. Colo. Feb. 7, 2020); *McCullon v. Parry*, No. 18-cv-00468-NYW, 2021 WL 877718, at *2 (D. Colo. Mar. 9, 2021) (discussing procedural history of case, including order administratively closing the matter pending mediation and subsequent order reopening the case upon parties’ failure to reach settlement).

Indeed, the United States Court of Appeals for the Tenth Circuit has expressly recognized that “[u]se of the administrative-closure mechanism allows district courts to

² The Parties’ Joint Motion for Appointment of Magistrate Judge Hegarty to Provide an Early Neutral Evaluation of the Case Pursuant to D.C.COLO.LCivR 16.6 was denied, thus eliminating any need to keep the case open actively on the docket. [#33, #35].

remove from their pending cases suits which are temporarily active elsewhere (such as before an arbitration panel) or stayed (such as where a bankruptcy is pending).” *Patterson*, 631 F. App’x at 534 (quotation marks and citation omitted). Like the foregoing situations, the Defendants ask that this action be stayed—here, for 100 days pending mediation of the Parties’ dispute. See [#28]. Given that the Parties have agreed to participate in mediation, and the duration of the mediation process between the Parties is unknown, this case presents similarly appropriate circumstances justifying administrative closure subject to reopening for good cause under the Local Rule.

Because the Parties have agreed to enter mediation, this court respectfully **RECOMMENDS** that this matter be **ADMINISTRATIVELY CLOSED** pursuant to D.C.COLO.LCivR 41.2, with leave to reopen for good cause shown, including but not limited to completion of mediation.

CONCLUSION

For the reasons stated herein, **IT IS ORDERED** that:

(1) The Motion to Stay [#28] is **GRANTED IN PART** and **DENIED IN PART**.

In addition, this court respectfully **RECOMMENDS** that:

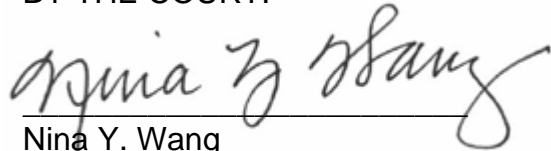
(1) This case be **ADMINISTRATIVELY CLOSED** pursuant to D.C.COLO.LCivR 41.2, with leave to reopen for good cause shown;³

³ Within fourteen days after service of a copy of this Recommendation, any party may serve and file written objections to the magistrate judge’s proposed findings of fact, legal conclusions, and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Griego v. Padilla (In re Griego)*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the district court on notice of the basis for the objection will not preserve the objection for *de novo* review. “[A] party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review.” *United States v. 2121 East 30th Street*, 73

- (2) The Parties be granted leave to file a request to reopen, or shall file a motion to dismiss, this action within 3 days of the completion of mediation; and
- (3) In the event that mediation remains pending, the Parties be ordered to **FILE** a Joint Status Report on **October 19, 2021**, and every 90 days thereafter.

DATED: July 21, 2021

BY THE COURT:



Nina Y. Wang
United States Magistrate Judge

F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar *de novo* review by the district judge of the magistrate judge's proposed findings of fact, legal conclusions, and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings of fact, legal conclusions, and recommendations of the magistrate judge. See *Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (holding that the district court's decision to review magistrate judge's recommendation *de novo* despite lack of an objection does not preclude application of "firm waiver rule"); *Int'l Surplus Lines Ins. Co. v. Wyo. Coal Refining Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (finding that cross-claimant waived right to appeal certain portions of magistrate judge's order by failing to object to those portions); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (finding that plaintiffs waived their right to appeal the magistrate judge's ruling by failing to file objections). *But see Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (holding that firm waiver rule does not apply when the interests of justice require review).