

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 19-cv-81189-RKA

JAMES TRACY,

Plaintiff,

vs.

RICKEY LEON BETHEL, JR., AMY
GRANDE, TRACY CLARK HAYNIE and
GIA SHAW,

Defendants.

**DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY
DISCOVERY AND INCORPORATED MEMORANDUM OF LAW**

Defendants, RICKEY BETHEL, JR., AMY GRANDE, TRACY CLARK HAYNIE and GIA SHAW (hereinafter, as "Defendants"), by and through their undersigned counsel, Whitelock & Associates, P.A., and pursuant to Fed. R. Civ. P. 12(b)(1)(6) and S.D. Fla. L. R. 7.1(a)(1), file this Reply in support of Defendants' Motion to Stay Discovery and Incorporated Memorandum of Law, and state as follows:

The Plaintiff initially opposes the Defendants' Motion for Stay based upon the Defendants purportedly not following the Court's and Magistrate's rules as it relates to discovery disputes. D.E. 27 at 1-2. Notably, the Parties conferred regarding the Defendants' anticipated motion for stay, and even addressed the motion in the Parties' Joint Discovery Plan and Scheduling Report. D.E. 19 at 4. Not once did Plaintiff's counsel indicate that he opposed such a motion on this basis. Regardless, although Defendants' Motion is cast in terms of a stay of

discovery, the Defendants' Motion is based on statutory qualified immunity, which acts as a complete bar from suit. *See generally* D.E. 23. Thus, it is anticipated that the implications of the Defendants' Motion would necessarily affect the Court's other deadlines, which requires a written motion. Additionally, a motion for stay is not one of the matters listed to be adjudicated by the Magistrate pursuant to D.E. 21. In fact, the motions listed concern discovery disputes related to the discoverability of specific matters (i.e. motions to compel, motions for protective order, etc.). D.E. 21. Lastly, the Defendants' Motion would certainly apply to discovery as it relates to non-parties, which also requires a written motion with the Court. D.E. 22 at 2. Nonetheless, should the Court find that the Defendant's Motion for Stay is within the purview of those discovery matters referred to the Magistrate, the Defendants will of course set a discovery hearing in accordance with D.E. 22.

As to the Plaintiff's substantive argument, the Plaintiff accurately goes on to recite case law as applied to stays of discovery. D.E. 27 at 3. The Plaintiff is correct that a stay of discovery is appropriate when the motion is dispositive, and when the stay is for a short period of time. *Id.* This is precisely what the Defendants are requesting, i.e., a stay of discovery pending the Court's ruling on their Motion to Dismiss based on their qualified immunity defense. *Id.* The Plaintiff cites to several cases where courts have found that a stay of discovery is inappropriate, but none of those cases concern an immunity defense that would potentially bar the entire action. Furthermore, several of the cases cited by the Plaintiff actually support a stay of discovery. *See Nankil v. Lockheed Martin Corporation*, 216 F.R.D. 689 (M.D. Fla. 2003) (Holding that a stay of discovery was appropriate in light of a motion to dismiss based on the statute of limitations); *See also Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94 Civ. 2120, 1996 WL 101277, at *2 (S.D.N.Y. March 7, 1996) (Holding that a stay of discovery was appropriate pending ruling on a motion for

judgment on the pleadings based upon the plaintiff's lack of standing). It should be emphasized that the Defendants are asserting a complete immunity from suit based upon the Plaintiff's facts as alleged in the current pleadings, and the Plaintiff's (admitted) inability to allege facts that would state a cause of action under the DPPA and overcome the Defendants' immunity. Thus, this case falls in line with the decisions cited in Defendants' Motion in which courts have held that a stay is appropriate when sovereign immunity is raised. *See Hargrove v. Henderson*, 1996 WL 467516, at 2 (M.D. Fla. 1996), *aff'd*, 124 F.3d 221 (11th Cir. 1997); *see also Blinco v. Green Tree Servs.*, 366 F.3d 1249, 1252 (11th Cir. 2004) ("The defense of sovereign or qualified immunity protects government officials not only from having to stand trial, but from having to bear the burdens attendant to litigation, **including pretrial discovery.**"); *McBride*, 2013 WL 674671 at 1; *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1280 (11th Cir. 1998) ("[O]nce a defendant raises the defense, 'the trial court must exercise its discretion in a way that protects the substance of the qualified immunity defense,'" and "'must exercise its discretion so that officials are not subjected to unnecessary and burdensome discovery or trial proceedings.'").

Additionally, the Plaintiff argues that he would be prejudiced from a stay of this action based upon the statute of limitations expiring in December of 2019. D.E. 27 at 4. Specifically, the Plaintiff argues that he should be able to conduct discovery over the next month to "discover any and all witnesses, information, documents and other tangible things relevant to the facts and circumstances surrounding the Defendant's alleged unlawful conduct" D.E. 27 at 4. The argument is disingenuous, as the Plaintiff has not even propounded any written discovery despite the fact that the statute of limitations is purportedly expiring in less than two (2) months. Even if the Plaintiff made such efforts, the Plaintiff, according to his response, has in fact filed suit within the statute of limitations. Thus, the Defendants fail to recognize how the statute of

limitations would serve as grounds for opposing a stay. The only conclusion is that the plaintiff seeks to utilize this action as a fishing expedition in order to sue other government officials before the statute of limitations expires. This is not only improper, but it should also be noted that the Plaintiff received the records giving rise to the lawsuit on February 12, 2019, yet waited six (6) months until August of 2019 to file suit. The Plaintiff should not be rewarded for waiting until the end of the statute of limitations period, and in doing so, request that the Court disregard well settled case law as it applies to a stay when the issue of immunity is raised.

Lastly, the Plaintiff's argument regarding the statute of limitations is demonstrative as to why this matter should be dismissed. The Plaintiff has sued four (4) government officials who are protected by Florida's sovereign immunity statute, without so much as one specific fact that would permit the Court to infer an improper purpose under the Act (except for the Plaintiff's one equivocal "upon information and belief" allegation). Despite the Plaintiff's inability to affirmatively set forth an improper purpose for the Defendants' inquiry, the Plaintiff seeks to conduct discovery to presumably find one. This is exactly the type of scenario that the sovereign immunity statute is designed to prevent. *See Blinco v. Green Tree Servs.*, 366 F.3d 1249, 1252 (11th Cir. 2004) ("The defense of sovereign or qualified immunity protects government officials not only from having to stand trial, but from having to bear the burdens attendant to litigation, *including pretrial discovery.*") (emphasis supplied). Accordingly, and consistent with the above-referenced case law, the Defendants' Motion should be granted.

WHEREFORE, the Defendants respectfully request that the Court grant the Defendants' Motion to Stay Discovery pending a determination of the Defendants' entitlement to qualified immunity and a ruling on the Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2019, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CMECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Filing.

s/Christopher J. Whitelock

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