

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

Civil Action No. 1:18-CV-03112-RBJ-STV

SEAN SLATTON,
Plaintiff,

v.

TODD HOPKINS,
BRANDON BARNES,
JOHN HUTTO,
AND FORT COLLINS POLICE DEPARTMENT
Defendants.

OFFICER TODD HOPKINS' MOTION TO STAY DISCOVERY

Defendant Todd Hopkins, appearing separately from the other named Defendants, by and through his attorneys, Marni Nathan Kloster and Nicholas Poppe, hereby submits his Motion to Stay Discovery, and in support of said Motion alleges the following:

CONFERRAL

Counsel for Defendant Hopkins conferred with Plaintiff and counsel for the other Defendants regarding the filing of this Motion. The other defendants consent to the relief requested, while Plaintiff opposes.

LEGAL ARGUMENT

Contemporaneous with the filing of this Motion, Officer Todd Hopkins has filed a motion to dismiss based in part upon qualified immunity. As qualified immunity is a threshold issue that must be decided by the Court prior to proceeding to discovery, a stay of discovery is warranted.

In evaluating a motion to stay, courts consider five factors: “(1) plaintiff’s interests in proceeding expeditiously with the civil action and the potential prejudice to plaintiff of a delay; (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.” *String Cheese Incident, LLC v. Stylus Shows, Inc.*, 2006 WL 894955 at * 2 (D. Colo. Mar. 30, 2006)(unpublished). All of the factors weigh in favor of a stay in this case.

Because of the important policy considerations inherent in qualified immunity, Officer Hopkins addresses the second factor first: burden upon the Defendant. When qualified immunity has been asserted at an early stage (prior to entry of a discovery order), courts “have routinely recognized that a stay of discovery may be appropriate or even required when the issue of immunity is being resolved.” *Lovato v. Pitts*, 2011 WL 2559827, at *1 (D. Colo. June 28, 2011)(unpublished). This is consistent with the rationale espoused by the Tenth Circuit in *Robbins v. Oklahoma*, where the court held that plaintiffs should not be permitted to proceed to discovery in the absence of plausible claims against each individual defendant. 519 F.3d 1242, 1249, fn. 2 (10th Cir. 2008). The stay of discovery pending a determination of immunity is also consistent with the Supreme Court’s underlying policy of granting governmental officials immunity from suit, and not merely immunity from liability. *See Seigert v. Gilley*, 500 U.S. 226, 231 (1991) (holding that “until this threshold immunity question is resolved, discovery should not be allowed.”) (internal citations omitted).

Officer Hopkins recognizes that in cases where some, but not all, defendants are entitled to some form of immunity, courts will allow discovery to proceed against the defendants who are not asserting immunity defenses. Yet Officer Hopkins would highlight *Weise v. Colorado*

Springs, Colo., 2018 WL 1640254 (D. Colo. April 5, 2018), where the court entered a complete stay of all discovery pending determination of the individual defendants' motions to dismiss. In a thorough and well-reasoned order, Judge Wang acknowledged that Colorado Springs could not assert immunity defenses, but given the nature of the claims against all parties, the "commonality of discovery" among the claims would all but ensure that the individual defendants would be prematurely dragged into discovery. *Id.* at *7. And citing to *Ashcroft v. Iqbal*, 556 U.S. 552, 685-86 (2009), Judge Wang reaffirmed that participation by the individual defendants would be necessary to "ensure the case does not develop in a misleading or slanted way that causes prejudice to their position." *Id.*

The posture of the present case warrants application of *Weise* to Officer Hopkins' Motion to Stay. In order to sustain his claim against the Fort Collins Police Department (or more appropriately, the City of Fort Collins), Mr. Slatton will be required to show that one or more of the individual Defendants violated his civil rights. *Trigalet v. City of Tulsa, Okla.*, 239 F.3d 1150, 1154 (10th Cir. 2001). If discovery were to proceed against the City, it is a near foregone conclusion that discovery will involve assertions as to which officers may have interacted with Mr. Slatton and the circumstances of those interactions. The individual Defendants would thus be placed in the limbo *Weise* seeks to avoid: active participation in discovery while awaiting the very real possibility that immunity removes them from the suit entirely. In such circumstances, the benefit of immunity from suit is lost, namely the release from the burdens of discovery. Officer Hopkins thus urges this Court to adopt Judge Wang's reasoning from *Weise* as being equally applicable to this case.

Returning to the first prong, potential prejudice to the plaintiff, Officer Hopkins would note that Mr. Slatton waited until the last day before the expiration of the statute of limitations to file suit. He provides no explanation as to why it took him over 700 days to seek relief from this Court. Mr. Slatton has also filed three amended complaints, further delaying this case another six months. In light of the slow pace of the case thus far, a delay to determine entitlement to qualified immunity presents little to no prejudice to Mr. Slatton.

As to the third factor, convenience to the Court, Officer Hopkins avers that the slight delay in determining immunity would permit the Court to set a unified Scheduling Order once it has ascertained which Defendants, if any, remain in the suit. The alternative is to conduct a piecemeal approach, which may require the parties to reevaluate discovery deadlines and limits once dispositive motion(s) have been ruled upon.

The fourth factor, interest to non-parties to the suit, also favors the granting of a stay. As the encounter between Mr. Slatton and law enforcement took place at a sorority formal, there are numerous witnesses who would likely need to be deposed. In light of the deficiencies in Mr. Slatton's Amended Complaint, it would be far better to determine whether he has any viable claims before the parties disrupt non-parties with subpoenas and depositions.

As to the final factor, the public interest, there is no apparent harm to the public in delaying determination of the claims in this case, especially given that Mr. Slatton has already delayed suit by more than two years.

CONCLUSION

Given the assertion of qualified immunity, and the loss of its protections were discovery to proceed, Officer Hopkins asserts that a stay of all discovery pending the determination of the parties' Motions to Dismiss is appropriate and necessary.

Respectfully submitted this 14th day of June, 2019.

/s/ Marni Nathan Kloster

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2019, I electronically filed the foregoing **OFFICER TODD HOPKINS' MOTION TO STAY DISCOVERY** with the Clerk of Court using the CM/ECF system and mailed to the following at their addresses:

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