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' MOTION TO STAY DISCOVERY PENDING THE COURT'S RULING ON THE MOTIONS TO DISMISS WITH INCORPORATED MEMORANDUM OF LAW**

Defendants, RICKY LEON BETHEL, JR., AMY GRANDE, TRACY CLARK HAYNIE and GIA SHAW, by and through their undersigned counsel, Whitelock & Associates, P.A., and pursuant to Federal Rule of Civil Procedure Rule 26(c) and this District's Local Rule 7.1, hereby move to stay discovery in the above-referenced matter, pending the Court's ruling on the Motion to Dismiss [D.E. 23], and in support thereof state follows:

## I. INTRODUCTION

On or about August 23, 2019, the Plaintiff filed four (4) lawsuits against FAU Police Department employees RICKEY BETHEL, JR. (Case No. 19-cv-81189), GIA SHAW (Case No. 19-cv-81193), TRACY HAYNIE (Case No. 19-cv-81190), and AMY GRANDE (Case No. 19-cv-81191), alleging violations of the Driver's Privacy Protection Act (18 U.S.C. Section 2721, *et seq.*) (hereinafter referred to as the "DPPA"). On September 20, 2019, all four (4)

actions were consolidated pursuant to D.E.(s) 6, 13, and 14. On September 23, 2019, the Plaintiff filed a Second Amended Complaint against all four (4) Defendants. D.E. 17. The Defendants have now moved to dismiss the Second Amended Complaint for failure to state a claim, and based on the Plaintiff's failure to allege facts that would overcome the Defendants' entitlement to qualified immunity. *See* D.E. 23. To further the interests of judicial economy and to preserve the Defendants' defenses of qualified immunity, the Defendants request that the Court stay discovery in this matter pending a ruling on the Motion to Dismiss which raises the immunity defense.

## II. LEGAL STANDARD

District Courts are given "broad discretion over the management of pre-trial activities, including discovery and scheduling." *See Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1269 (11th Cir. 2001); *see also Adinolfe v. United Techs. Corp.*, 768 F.3d 1161, 1167 (iith Cir. 2014) (court has broad discretion to manage cases before them). This broad discretion extends to pre-trial matters such as discovery and scheduling. *Johnson v. Bd. of Regents of the Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2007). As a general rule, motions to dismiss should be resolved as soon as practicable to obviate avoidable discovery costs, especially where a dubious claim appears destined for dismissal. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997) ("If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided.").

In addition, when qualified immunity is raised as a defense, the District Court's discretion is tempered by the need to ensure that the immunity defense is fully honored and preserved: "Although the trial court has substantial discretion in discovery matters, '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'" prior to a ruling on the issue of qualified immunity. *See K.M. v. Ala. Dep't. of Youth Serv.*, 209 F.R.D. 493, 495 (M.D. Ala. 2002) (*quoting Crawford–El v. Britton*, 523 U.S. 574, 597-98 (1998)). Even where some, but not all, defendants have moved to dismiss on the basis of qualified immunity, "an across-the-board stay of discovery furthers the interests of judicial and litigant economy. *See K.M.*, 209 F.R.D. at 495; *McBride v. Houston County Health Care Authority*, 2013 WL 674671 at 2.

## III. ARGUMENT

In this case, each of the claims against the Defendants are identical. Each of the Defendants has asserted grounds for dismissal, including, that the Plaintiffs' DPPA claims are barred by the doctrine of qualified immunity. Qualified immunity is deemed an immunity from suit, not just from liability. *See Scott v. Harris*, 127 S. Ct. 1769, 1774 n. 2 (2007) ("Qualified immunity is 'an ***immunity from suit*** rather than a mere defense to liability[.]'") (emphasis supplied). Thus, "[b]ecause the purpose of qualified immunity is to spare a Defendant from the rigors of defending a lawsuit, courts should determine whether the Defendant is entitled to this immunity as early as possible in the litigation." *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***.") (emphasis supplied).

Moreover, as the Supreme Court has admonished, "[u]ntil [the] threshold immunity question is resolved, discovery should not be allowed." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Indeed, "to 'protect[ ] the substance of the qualified immunity defense,' the court 'must exercise its discretion so that officials are not subjected to unnecessary and burdensome

discovery or trial proceedings' until after the court has determined that the qualified-immunity defense will not stand." *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.'").

To spare the Individual Defendants who are asserting qualified immunity from potentially unwarranted burdens of litigation in this matter, the Court should stay discovery until it resolves the Defendants' motions to dismiss. *See Caraballo-Sandoval v. Honsted*, 35 F.3d 521, 524 (11th Cir. 1994) ("[T]he district court properly stayed discovery until it decided the qualified immunity issue."); *see also Berry v. Canady*, 2011 WL 806230 at 1 (M.D. Fla. 2011) ("Since the Defendant in this instance filed a Motion to dismiss based upon the defense of qualified immunity, the Court finds good cause to grant the stay," as "neither the parties nor the court have any need for discovery before the court rules on the motion.") (citation omitted); *Duque v. City of Miami Beach*, 1997 WL 419642 at 1 (S.D. Fla. 1997) (staying all discovery pending resolution of qualified immunity issue).

In addition, none of the parties should be required to engage in discovery until the Court rules, because "[a]s an initial matter, there is little reason to fear that the court's resolution of the qualified-immunity defense will cause a lengthy delay," *see McBride*, 2013 WL 674671 at 2, and, moreover, the motions to dismiss may narrow the issues as well as streamline the litigation and scope of discovery for all involved.

Lastly, the Eleventh Circuit has held that discovery should not occur when facial challenges to the complaint are outstanding. "Facial challenges to the legal sufficiency of a

claim or defense, ***such as a motion to dismiss based on failure to state a claim for relief***, should . . . be resolved before discovery begins." *Chudasama*, 123 F.3d at 1367 (emphasis supplied) (district court abused its discretion by ordering defendant to respond to discovery before ruling on motion to dismiss); *see also Solar Star Sys., LLC v. Bellsouth Telecomm'ns, Inc.*, 2011 WL 1226119 at 1 (S.D. Fla. 2011) ("Potentially dispositive motions filed prior to discovery weigh heavily in favor of issuing a stay."); *In re Managed Care Litig.*, 2001 WL664391 at 2 (S.D. Fla. 2001) ("This Court firmly abides by *Chudasama*'s instructions that '[d]iscovery should follow the filing of a well-pleaded complaint'"). This rule recognizes that discovery stays can avoid unnecessary costs to the parties, as well as to the Courts: "discovery imposes burdens on the judicial system; scarce judicial resources must be diverted from other cases to resolve discovery disputes." *See Chudasama*, 123 F.3d at 1367-68. Thus, if a stay is entered and the motions to dismiss are ultimately granted, in whole or in part, the Court will have saved the parties a significant amount of time and expense by postponing discovery and will also have avoided embroiling itself, or the Magistrate Judge, in the parties' discovery disputes. Even if the motions to dismiss are denied, a brief delay while the Court considers, and rules upon, the motions will not cause the Plaintiff any prejudice. Accordingly, the Court should stay all discovery until the Defendants' Motions to Dismiss are resolved. *See Carter v. DeKalb Cnty., Ga.*, 521 F. App'x 725, 728 (11th Cir. 2013) ("neither the parties nor the court have any need for discovery before the court rules on the motion" to dismiss); *Moore v. Potter*, 141 F. App"x 803, 807 (11th Cir. 2005).

## CONCLUSION

For the reasons above, Defendants request that the Court grant this motion and enter a stay of discovery pending a determination of the individual Defendants' entitlement to qualified immunity and a ruling on the Motion to Dismiss. A proposed order is filed simultaneously herewith.

## CERTIFICATE OF CONFERRAL

In accordance with Local Rule 7.1(2)(3), counsel for the movant has conferred with all parties. Counsel for the Plaintiff objects to the requested relief in this motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 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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