

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:19-cv-81189-RKA

JAMES TRACY,

Plaintiff,

v.

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

Defendants.

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY  
DISCOVERY AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW Plaintiff, JAMES TRACY, by and through the undersigned, hereby files this Response in Opposition to Defendants' Motion to Stay Discovery [D.E. 24] and states:

**INTRODUCTION**

The Defendants' motion to stay discovery, much like their improper motion to dismiss, disregards the law, as well as the allegations set forth in Plaintiff's Second Amended Complaint [D.E. 17]. Similarly, Defendants' improper motion to stay discovery—which violates this Court's orders governing discovery motions—should also be denied because the Defendants are not entitled to a discovery stay or immunity at the motion to dismiss stage for violations of clearly established federal law, as outlined in Plaintiff's Response in Opposition to Defendants' Motion to Dismiss [D.E. 26], which is incorporated herein by reference.

**A. DEFENDANTS' MOTION SHOULD BE DENIED FOR FAILURE TO COMPLY  
WITH THE COURT'S ORDERS GOVERNING DISCOVERY MATTERS**

First and foremost, the Defendants failed to comply with both the Court's Order referring all pretrial non-dispositive and discovery matters to Magistrate Judge Brannon [D.E. 21] and the

Court's Order Setting Discovery Procedure [D.E. 22] (collectively hereinafter, the "Orders"). Pursuant to the Orders, "**The Parties shall not file any written discovery motions, including motions to compel, for protective order, or for sanctions, without the consent of the Magistrate Judge . . .** If, after conferring, the parties are unable to resolve their discovery dispute without Court intervention, they shall **not** file written motions. Rather, the "moving party" shall follow Magistrate Judge Brannon's standard discovery procedures . . . ." [D.E. 21]. The Defendants were required to "seek relief within 14 days after the grounds for relief occur by contacting [Judge Brannon's] Chambers (561-803-3470) and placing the matter on the next available discovery calendar." [D.E. 22]. On the same day, Defendants were required to "email the Court (brannon@flsd.uscourts.gov) and opposing counsel a concise discovery memorandum of three pages<sup>1</sup> or less (1) specifying the substance of the discovery matter to be heard . . . ; (2) certifying that the parties have complied with the prehearing communication requirement set forth above; and (3) attaching a copy of all source materials relevant to the discovery dispute . . ." *Id.* Judge Brannon's standard discovery procedures clearly state, "No written discovery motions, including motions to compel **and motions for protective order**, shall be filed unless requested by the Court . . . ." *Id.* (emphasis added).

The Defendants blatantly violated the Courts' Orders by (1) failing to contact the Court's chambers and placing the matter on the discovery calendar; (2) failing to email the Court and the Plaintiff a concise discovery memorandum of three pages or less specifying the substance of the matter; and (3) filing a written discovery motion without consent of Magistrate Judge Brannon. As a result of failing to comply with the Orders, Defendants' improper motion to stay discovery

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<sup>1</sup> Defendants' improper motion to stay discovery also exceeds the page limitations permitted by the Court's Order Setting Discovery Procedure [D.E. 22].

should be denied. *See Id.* (stating, “The Court may impose appropriate sanctions upon a finding of failure to comply with this Order or other discovery misconduct.”).

**B. DEFENDANTS FAILED TO SHOW GOOD CAUSE**

Defendants’ motion to stay should also be denied as a matter of law because the Defendants have not demonstrated “good cause” and reasonableness for a discovery stay. Discovery stays are “rarely granted”. *Nankil v. Lockheed Martin Corporation*, 216 F.R.D. 689 (M.D. Fla. 2003); *Hines v. D’Artois*, 531 F.2d 726 (5th Cir. 1976); and *Feldman v. Flood*, 176 F.R.D. 651 (M.D. Fla. 1997). The moving party must demonstrate “good cause” and reasonableness for the issuance of a protective order pursuant to Fed.R.Civ.P. 26(c); *Feldman*, 176 F.R.D. at 652-53. Good cause may be shown where a party has filed a dispositive motion, the stay is for a short period of time, and the opposing party will not be prejudiced by the stay. *Rubinstein v. Keshet Inter Vivos Trust*, 2018 WL 3730868, at \*1 (S.D. Fla. April 27, 2018); *See Spencer Trask Software and Information Services, LLV v. RPost Intern. Ltd*, 296 F.R.D. 367, 268 (S.D.N.Y. 2017); *See also Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94 Civ. 2120, 1996 WL 101277, at \*2 (S.D.N.Y. March 7, 1996). Motions to stay discovery are not favored by the courts because when discovery is delayed or prolonged it can create case management problems which impede the court’s responsibility to expedite discovery and cause unnecessary litigation expenses and problems. *Kron Medical Corp. v. Groth*, 119 F.R.D. 636 (M.D. N.C. 1988); *See also Feldman*, 176 F.R.D. 651 (motion to dismiss was not dispositive so as to warrant stay of discovery); *See also Simpson v. Specialty Retail Concept, Inc.*, 121 F.R.D. 261 (M.D. N.C. 1988) (stay of all discovery pending resolution of motion to dismiss was not appropriate).

Defendants have not met their burden as a matter of law because Defendants’ motion to dismiss is not dispositive. Defendants are not entitled to qualified immunity or a discovery stay

at the motion to dismiss stage for alleged Driver's Privacy Protection Act ("DPPA") violations. *See Plaintiff's Response to Defendants' Motion to Dismiss* [D.E. 26]. Moreover, a discovery stay would cause unnecessary delay and Plaintiff would be prejudiced.

**C. A DISCOVERY STAY IS NOT APPROPRIATE OR REASONABLE AND WOULD PREJUDICE PLAINTIFF**

Should the Defendants be awarded even a temporary stay of discovery, the Plaintiff will undoubtedly be prejudiced and harmed due to applicable statutes of limitations expiring in December 2019 and his inability to adequately prepare for and conduct depositions, and to, in a timely manner, discover any and all witnesses, information, documents and other tangible things relevant to the facts and circumstances surrounding the Defendants' alleged unlawful conduct, and any matter that is relevant to the parties' claims or defenses.

WHEREFORE, Plaintiff respectfully requests that Defendants' Motion to Stay Discovery be denied and the Court grant any and all further relief as is just and proper.

Dated: 10/21/2019

Respectfully submitted,

/s/ Louis Leo IV  
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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21st day of October, 2019, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. I further certify that the foregoing document was served via transmission of Notice of Electronic Filing generated by CM/ECF to any and all active CM/ECF participants.

/s/ Louis Leo IV  
**Louis Leo IV, Esq.**