

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KYLE VESS,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 3:21-CV-01764-D
	§	
CITY OF DALLAS, a municipal corporation, and BRAD ALAN COX,	§	
	§	
<i>Defendants.</i>	§	

**DEFENDANT CITY OF DALLAS’S MOTION FOR PROTECTIVE
ORDER TO STAY DISCOVERY, AND BRIEF IN SUPPORT**

TO THE HONORABLE COURT:

Defendant City of Dallas (“City”), pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Local Civil Rule LR 7.1, files this Motion for Protective Order to Stay Discovery (“Motion”) and, in support thereof, respectfully shows the Court as follows:

I. BACKGROUND

On July 29, 2021, Plaintiff Kyle Vess (“Plaintiff”) filed this action, pursuant to 42 U.S.C. § 1983, against the City and Defendant Brad Cox (“Cox”), a former Dallas Fire-Rescue firefighter/paramedic, alleging that Cox assaulted and used excessive force against him, without provocation or justification, during their encounter on August 2, 2019. (ECF. No. 1). On August 20, 2021, the City moved to dismiss Plaintiff’s original complaint (ECF No. 5) under Fed. R. Civ. P. 12(b)(6) for failure to state a plausible claim against it. Thereafter, on September 30, 2021, Plaintiff moved to file an amended complaint (ECF No. 15). On October 1, 2021, the Court

granted Plaintiff's motion, and denied without prejudice the City's motion to dismiss (ECF No. 16).

On October 14, 2021, Plaintiff filed his First Amended Complaint ("Complaint"), alleging that Cox's actions violated Plaintiff's constitutional rights under the Fourth Amendment (ECF. No. 17, ¶¶ 13-17, 29-34). The Complaint likewise alleges municipal liability claims against the City based on alleged unconstitutional policies and customs, as well as failure to train, supervise, and discipline (*Id.* ¶¶ 35-38). On October 27, 2021, the City timely moved to dismiss Plaintiff's amended complaint under Rule 12(b)(6) for failure to state a claim. (ECF. No. 20). On October 28, 2021, Cox filed his answer to Plaintiff's Complaint, in which he affirmatively pleads the defense of qualified immunity ("QI"). (ECF. No. 20) Specifically, Cox asserts, *inter alia*, that he was at all times a public official, that he is entitled qualified immunity from suit and from damages, and that he did not act with any intent to deprive Plaintiff of his legally protected constitutional rights, and that he did not violate clearly established law of which a reasonable person would have known. (*Id.* ¶¶ 2.2; 2.8). On October 28, 2021, the day after the City filed its Motion to Dismiss, Plaintiff served his Request for Production of Documents on the City (the "Discovery"). The City now moves the Court for a protective order staying discovery until after the Court rules on its pending Motion to Dismiss and resolves Cox's qualified immunity defense.

II. ARGUMENT AND AUTHORITIES

The Court "has broad discretion and inherent power to stay discovery' while a motion to dismiss is pending." *Reich Album & Plunkett, L.L.C. v. Wheat, Opperman & Meeks, PC.*, No. 06-10850, 2007 WL 1655677, at *3 (E.D. La. June 4, 2007) (quoting *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987)). Further, the Fifth Circuit has held that it is appropriate to stay discovery until preliminary questions that may dispose of the case are determined. *Petrus*, 833

F.2d at 583. There is also “power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); see *In re Beebe*, 56 F.3d 1384 (5th Cir. 1995) (citing *Landis* in support of stay). In addition, under Federal Rule of Civil Procedure 26(c), the Court may issue a protective order staying discovery for good cause, such as a finding that further discovery will impose undue burden without aiding the resolution of the dispositive motion. *Fujita v. United States*, 416 F. App’x 400, 402 (5th Cir. 2011) (citations omitted). Here, good cause exists to stay discovery pending resolution of the City’s Motion to Dismiss and Cox’s qualified immunity defense.

The City maintains that Plaintiff has not alleged facts sufficient to state a plausible claim against it, or facts from which this Court can draw a reasonable inference that the City is liable for the harm alleged in the Complaint. Indeed, the City’s pending motion to dismiss is dispositive and turns solely on whether Plaintiff’s pleadings sufficiently allege a pattern of unconstitutional conduct to establish an official policy, and whether Plaintiff’s pleadings sufficiently allege facts which show that the City’s final policymaker was deliberately indifferent to a deficiency in training, supervision, or discipline. Requiring the City to respond to Plaintiff’s Discovery, which seeks voluminous documents from various sources, before the Court determines preliminary questions that may dispose of Plaintiff’s claims against it will impose undue burden and expense. The City’s position is supported by significant case law and should be ruled upon prior to requiring the City to answer voluminous discovery. *Fujita*, 416 F. App’x at 402 (citations omitted); *Petrus*, 833 F.2d at 583.

Further, Plaintiff seeks a broad array of documents none of which are salient to the Court’s determination of the City’s Motion to Dismiss. Among Plaintiff’s 31 requests for production of

documents, Plaintiff seeks the production of all “written documents or other recorded data of any kind describing or otherwise memorializing policies and/or procedures detailing the liability the City of Dallas holds in relation to its employees’ individual actions.” Plaintiff also seeks “[c]opies of Dallas Fire-Rescue Standard Operating Procedures that were in effect as of August 2, 2019.” Much of the discovery sought from the City requests documents and information related to Cox’s hiring, employment track record, communications concerning Cox, prior internal investigations concerning Cox, and evidence relating to Cox’s alleged conduct in the instant action. This discovery has little-to-nothing to do with Plaintiff’s municipal liability claims against the City. Rather, it is primarily sought for the purpose of establishing Cox’s liability.

Further, a stay of discovery is particularly appropriate when a defendant asserts an immunity defense. *See Wells v. State Att’y Gen. of La.*, 469 F. App’x 308, 310 (5th Cir. 2012) (“[D]iscovery generally is not allowed until the resolution of immunity issues in the case.”). This is because immunity is a threshold question that needs to be resolved as early in litigation as possible. *Nieto v. San Perlita Indep. Sch. Dist.*, 894 F.2d 174, 177 (5th Cir. 1990); *see also Siegert v. Gilley*, 500 U.S. 226, 232 (1991) (“One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.”). In fact, in the context of qualified immunity, the Fifth Circuit has explicitly held that a discovery stay is mandatory until the Court first finds that the pleadings assert facts which, if true, are sufficient to overcome the immunity defense. *See Wicks v. Miss. State Emp’t Servs.*, 41 F.3d 991, 994–95 (5th Cir. 1995) (“If [the plaintiff’s] complaint falls short of this [pleading] standard, the district court should rule on the motion to dismiss before any discovery is allowed.”).

As previously stated, Cox has asserted that he is entitled to QI on Plaintiff's claims. (ECF. No 20 ¶¶ 2.2; 2.8) Accordingly, there is good cause to stay discovery in this action until the Court resolves the issue of whether Plaintiff's pleadings are sufficient overcome Cox's asserted QI defense. *See, e.g., Williamson v. U.S. Dep't of Agric.*, 815 F.2d 368, 383 (5th Cir. 1987) (holding that the district court properly stayed discovery pending resolution of issues of absolute, qualified, and sovereign immunity); *McDonald v. Griffin*, 228 F.3d 409, 409 (5th Cir. 2000) (holding that the district court did not abuse its discretion by staying discovery pending resolution of a defendant's sovereign and absolute immunity defenses); *Hutchings v. Cty. of Llano*, No. 20-CV-308, 2020 WL 2086553, at *2 (W.D. Tex. Apr. 30, 2020) (finding that the defendants established good cause for a stay of discovery until the court determined the threshold question of whether plaintiff's claims were barred by judicial or qualified immunity); *Carlisle v. Normand*, No. 16-CV-3767, 2018 WL 3474715, at *3–4 (E.D. La. July 19, 2018) (staying discovery pending resolution of motions to dismiss involving sovereign and qualified immunity).

Finally, Plaintiff will not be unfairly prejudiced by a stay of discovery. As one court noted, “[i]f, on the other hand, the defendants’ Motion is denied and they subsequently respond to plaintiff’s discovery requests, plaintiff will not be prejudiced.” *Stollings v. Texas Tech Univ.*, No. 5:20-CV-250-H, 2021 WL 4171815, at *2 (N.D. Tex. Apr. 13, 2021). The deadline for completion of discovery is eight months away, and there is no trial date. Indeed, should Plaintiff overcome the City’s motion to dismiss and Cox’s QI defense, he will have ample time to conduct fulsome discovery.

Because collecting, reviewing, and analyzing information responsive to the Discovery, would impose undue burden and expense, discovery should be stayed pending the Court’s resolution of the City’s motion to dismiss. “If [d]efendants must respond to discovery now and

the Motion to Dismiss is later granted, resources will have been expended needlessly.” *Stollings* 2021 WL 4171815, at *1–2 (*quoting Davis v. Landrieu*, No. 18-CV-231, 2018 WL 10760297, at *2 (E.D. La. Apr. 5, 2018)).

III. CONCLUSION

WHEREFORE, the City respectfully requests this Court GRANT its Motion and issue a protective order staying discovery until after it resolves the City’s Rule 12(b) motion to dismiss and Cox’s qualified immunity defense.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on November 29, 2021, I conferred via email with Plaintiff’s counsel Sean McCaffity. Undersigned explained the City’s position, and Plaintiff’s counsel nonetheless was opposed to this Motion. The Parties, therefore, were unable to reach agreement, and this matter is submitted to the Court for resolution.

s/ Devin Q. Alexander

Assistant City Attorney

CERTIFICATE OF SERVICE

I certify that on November 29, 2021, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the CM/ECF electronic case filing system of the court. The electronic case filing system will send a “Notice of Electronic Filing” notification to all case participants registered for electronic notice, including all *pro se* parties and/or attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

s/ J. Cheves Ligon

J. Cheves Ligon