

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-02802-REB- MEH

JEREMY C. MYERS; and WESTERN SALVAGE LTD.,

Plaintiffs,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police Department in his official and individual capacity;

LUKE HECKER, Chief of Loveland Police Department, in his official and individual capacity;

DENNIS V. HARRISON, Chief of the Fort Collins Police Department, in his official and individual capacity;

JAMES A. ALDERDEN, Sheriff of Larimer County, Colorado, in his official and individual capacity;

CITY OF LOVELAND, a Colorado municipality;

CITY OF FORT COLLINS, Colorado, a municipality;

LARIMER COUNTY, a County, by and through the

LARIMER COUNTY BOARD OF COUNTY COMMISSIONERS;

LARRY ABRAHAMSON, District Attorney of the Eighth Judicial District in his official capacity; and

EIGHTH JUDICIAL DISTRICT OF COLORADO, a political subdivision of the State of Colorado.

Defendants.

**LOVELAND DEFENDANTS' UNOPPOSED MOTION TO STAY ALL DISCOVERY
PENDING RESOLUTION OF DEFENDANTS KOOPMAN AND HECKER'S MOTION
FOR SUMMARY JUDGMENT BASED UPON QUALIFIED IMMUNITY**

D.C.Colo.L.Civ.R. 7.1A CERTIFICATE OF COMPLIANCE

Counsel for the Loveland Defendants certifies that he has conferred with counsel for Plaintiffs and Co-Defendants pursuant to D.C.Colo.L.Civ.R. 7.1A. Plaintiffs and Co-Defendants do not object to this motion.

DEFENDANTS Brian Koopman and Luke Hecker, in their official and individual capacities, and Defendant City of Loveland (collectively "Loveland Defendants"), move the Court extend its discovery stay order to a stay of all discovery, and not just discovery "as to Defendants Koopman and Hecker," pending ruling on Defendants Koopman and Hecker's Motion for Summary Judgment Based Upon Qualified Immunity, and as grounds therefore show to the Court:

1. Defendants Koopman and Hecker have moved for summary judgment based upon qualified immunity (CM/ECF Docket #56, filed 04/29/10). Defendants Koopman and Hecker filed an Unopposed Motion to Stay Discovery Pending Ruling on Their Motion for Summary Judgment Based Upon Qualified Immunity (CM/ECF Docket # 58, filed 04/29/10).

2. The United States Magistrate Judge, Honorable Michael E. Hegarty, in an order granting the Motion to Stay dated May 3, 2010 at 3 (CM/ECF Docket #61), ruled that "[t]he proceedings of this case are hereby stayed as to *Defendants Koopman and Hecker* pending the District Court's ruling on Defendants' Motion for Summary Judgment." (emphasis added).

3. Defendant Koopman, as the primary Defendant involved in the underlying criminal investigation and lead detective with respect to the search and subsequent arrest of Plaintiff Myers, will undoubtedly be affected by *any* discovery which takes place in this matter. Further, to the extent any discovery occurs while the Motion for Summary Judgment Based Upon Qualified Immunity is pending, such discovery will almost certainly have to be repeated on behalf of Defendants Koopman and Hecker in

the event that they do not prevail in their Motion for Summary Judgment, constituting additional burdens and expense to all parties. Moreover, there is currently pending on behalf of all Defendants motions to dismiss which, if granted, will obviate the need for any discovery.

4. This motion is governed by *Daniels v. Colorado Department of Corrections*, 2009 WL 1174469 (D.Colo.) and *String Cheese Incident, LLC v. Stylus Shows, Inc.*, 2006 WL 894955 (D.Colo.). In *Daniels*, Magistrate Judge Hegarty extended a discovery stay to all defendants pending resolution of the qualified immunity question which applied to some but not all of the defendants where, as in the instant case, the plaintiff had not distinguished any facts or claims between defendants in their official or individual capacities. The Court, in evaluating the request for a stay of all discovery, considered the following five factors in guidance of the Court's determination:

"(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.

Daniels at 2 (citing *String Cheese Incident, LLC, supra*).

5. Utilizing those same five factors here, the Court should conclude that while Plaintiffs in the abstract have an interest in proceeding expeditiously, Plaintiffs have also been unopposed to all efforts on the part of all defendants to stay discovery pending resolution of the motions to dismiss and Motion for Summary Judgment Based Upon Qualified Immunity. Even if Plaintiffs' abstract interest in proceeding expeditiously were given weight, such interest is offset by Defendants' burden in conducting and responding to discovery for Plaintiffs' claims that are brought against *all defendants*,

whether in official or individual capacities and whether against persons or governmental entities. Therefore, in light of the United States Supreme Court's instruction regarding qualified immunity, namely, that discovery should not be allowed until the threshold immunity question is resolved, e.g., *Siegert v. Gilley*, 500 U.S. 225, 233 (1991), this Court should find that the potential harm to Plaintiffs in any delay in discovery is outweighed by the burden on Defendants.

6. The remaining *String Cheese* factors (i.e., the Court's efficiency and interests of nonparties and the public in general) do not prompt a different result. See *String Cheese* at 2; *Daniels* at 3. Considering judicial efficiency and economy and the burden of discovery as described, the Court is respectfully requested to find that a complete stay of all discovery pending resolution of the Motion for Summary Judgment Based Upon Qualified Immunity is appropriate at this stage of the litigation notwithstanding that a stay of all discovery is generally disfavored in this district.

WHEREFORE, Loveland Defendants respectfully pray that the Court enter an order staying all discovery pending resolution of Defendants Koopman and Hecker's Motion for Summary Judgment Based Upon Qualified Immunity.

DATED the 19th day of May, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2010, I electronically filed the foregoing **LOVELAND DEFENDANTS' UNOPPOSED MOTION TO STAY ALL DISCOVERY PENDING RESOLUTION OF DEFENDANTS KOOPMAN AND HECKER'S MOTION FOR SUMMARY JUDGMENT BASED UPON QUALIFIED IMMUNITY** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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