

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

JEREMY C. MYERS;
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.

JOINT STIPULATED MOTION TO VACATE TRIAL DATE PENDING
DETERMINATION OF ENTITLEMENT TO QUALIFIED IMMUNITY

THE PARTIES, by and through their attorneys of record, under D.C.COLO.LCivR 6.1 and 7.1, United States v. West, 828 F.2d 1468, 1469-70 (10th Cir. 1987), and REB Civ. Practice Standard II.F.1. hereby jointly move the Court to vacate the trial date, pending determination of entitlement to qualified immunity, and in support hereof state as follows:

1. On April 29, 2010, Defendants Brian Koopman and Luke Hecker filed a

motion to stay discovery pending a ruling on their motion for summary judgment based on qualified immunity [Doc. No. 58]. The Loveland Defendants filed a similar motion to stay discovery on May 20, 2010 [Doc. No. 62]. The Court granted the motions to stay discovery, as to the City of Loveland, and Defendants Koopman and Hecker on May 24, 2010 [Doc. No. 67].

2. On June 11, 2010, The City of Fort Collins and Defendant Dennis V. Harrison filed an unopposed motion to stay discovery pending a determination of qualified immunity as to Defendant Harrison [Doc. No. 76]. The Court granted this motion on June 14, 2010 [Doc. No. 78].

3. A determination as to the applicability of qualified immunity to Defendants Koopman, Hecker, and Harrison are still pending, and create the possibility of the resolution of many of the claims Plaintiffs have asserted.

4. Per United States v. West, 828 F.2d 1468, 1469-70 (10th Cir. 1987) and REB Civ. Practice Standard II.F.1., there are four primary factors that should be considered to determine whether a trial continuance shall be allowed:

(1) the diligence of the party requesting the continuance; (2) the likelihood that the continuance, if granted, would accomplish the purpose underlying the party's expressed need for the continuance; (3) the inconvenience to the opposing party, its witnesses, and the court resulting from the continuance; [and] (4) the need asserted for the continuance and the harm that [movant] might suffer as result of the district court's denial of the continuance.

Iskowitz v. Cessna Aircraft Co., 2009 U.S. Dist. LEXIS 40226 (Judge Blackburn, D. Colo. April 27, 2009) (quoting United States v. West, 828 F.2d 1468, 1470 (10th Cir. 1987)).

5. Because all parties are requesting a continuance, not all of these factors apply. In general, the main reason the parties request the continuance is because discovery has been stayed as to some of the Defendants pending the applicability of qualified immunity. It would be impossible to proceed on the current trial schedule if discovery is being conducted as to some defendants, but not all of them. Importantly, discovery has been stayed as to Detective Koopman, who is the defendant most knowledgeable about Plaintiffs' allegations in this lawsuit. In addition, motions to dismiss and for summary judgment are pending that will likely change the parties and claims in this lawsuit. Moving forward with the current trial schedule without knowing the outcome of these motions unnecessarily expands the scope of the case.

6. Applying the West factors, the first factor concerning the diligence of the requesting party does not apply, as all parties are requesting the continuance. To the extent there is a question whether all parties have been diligent, each defendant has filed a motion to dismiss on several grounds. Several other defendants have also filed motions for summary judgment based on qualified immunity. Further, because of these motions, discovery has been stayed as to some Defendants. Thus, the parties are diligently working this case through this necessary motions practice.

7. The second factor concerning whether the continuance will accomplish the purpose underlying the expressed need for the continuance militates strongly in favor of a continuance. Again, moving forward with the trial schedule while the motions for summary judgment and to dismiss are pending unnecessarily expands the scope of this case. More importantly, moving forward with the trial schedule without conducting discovery of some of

the Defendants including one of the key players is unworkable. Resetting the trial date for a date well after the summary judgment motions and motions to dismiss are decided accomplishes the need to conduct discovery on a smaller scope along with the running of the trial schedule.

8. The third factor concerning the inconvenience to the parties and the court also weighs in favor of a continuance. By this joint motion, the parties agree that it will be more convenient for them to continue the trial. It will also be more efficient for the Court to rule on the Motions likely eliminating parties and/or claims streamlining the case before forging ahead on a trial schedule. Moreover, because the qualified immunity motions must be determined as soon as possible, it is best that the focus is on these motions and not on any other filings the parties would have to make as part of the current trial schedule.

9. Finally, the fourth factor concerning the harm the parties will suffer if this motion is not granted also weighs in favor of a continuance. If this Court denies this motion, the parties will be forced to conduct partial discovery including no discovery of one of the key witnesses and on a likely broader scope. Consequently, the parties will be forced to file expert disclosures and to comply with other trial schedule deadlines without the benefit of full discovery and without knowing the true scope of the case.

WHEREFORE, for these reasons, the parties stipulate and join in this motion to the Court for an Order vacating the trial date pending determination of entitlement to qualified immunity, and for all other and further relief as this Court deems just and appropriate.

Dated this 16th day of June 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 16th day of June 2010, I electronically filed the foregoing JOINT STIPULATED MOTION TO VACATE TRIAL DATE PENDING DETERMINATION OF ENTITLEMENT TO QUALIFIED IMMUNITY with the Clerk of Court using the CM/ECF system, which will send notification to the following e-mail addresses:

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