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**NOT FOR PUBLICATION**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Rachel Jernigan,  
Plaintiff,  
vs.  
Kyle Richard, et al.,  
Defendants.

No. CV-08-2332-PHX-GMS

**ORDER**

Pending before the Court is the Town of Gilbert, Pamela Elliott, David Landgraf and Randy McLaws’s (the “Town Defendants”) Motion to Stay Discovery (Dkt. # 60).

Counsel has not yet filed a motion for summary judgment on qualified immunity, but seeks a stay of discovery pending the resolution of that, as yet, unfiled motion. Further, counsel did not consult with opposing counsel to determine, prior to filing their motion, whether they could mutually agree on a discovery schedule that would prioritize relevant discovery while minimizing discovery in which the Town Defendants might not have to participate should its motion for summary judgment be granted.

The discovery deadline of July 16 looms. Between now and that deadline the parties will, of necessity, conduct discovery concerning a number of matters in which the Town Defendants would not otherwise have been required to participate had an early motion for summary judgment been granted. Even assuming counsel were to file a motion promptly, the observance of a normal briefing schedule would not result in a decision on the motion

1 until approximately the time of the discovery deadline. Counsel for the Town Defendants  
2 acknowledges that they bring this motion for stay late in the course of the entered discovery  
3 schedule but assert in their Reply that their failure to more timely assert this motion results  
4 in part from their desire to cooperate with the necessary discovery needed by Plaintiff's  
5 counsel, Plaintiff's discovery disputes with the Town Defendants and with its co-defendant,  
6 the dilatoriness of Plaintiff's counsel in seeking reasonable depositions relating to the Town  
7 Defendants' motion, and the unreasonable positions taken by Plaintiff's counsel.

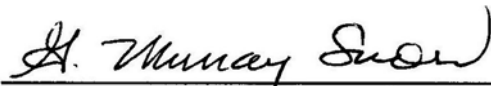
8         Respectfully, the Court observes that even assuming all of the above, nothing  
9 prevented the Town Defendants from filing their qualified immunity motion at an earlier  
10 date. And, if the Town Defendants needed discovery prior to filing its motion beyond the  
11 facts that its own witnesses could have set forth by affidavit, nothing prevented the Town  
12 Defendants from pursuing such discovery early on and filing their motion. As of yet, there  
13 are no facts presented to the Court on which the Court could determine that the Plaintiff's  
14 claims against the Town Defendants are "insubstantial claims" of the kind that should spare  
15 it from participating in further discovery. *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009).  
16 To stay the action now would require the Court to assume that Plaintiff's claims are of this  
17 nature. Respectfully, the Court is disinclined to engage in any such assumptions in the  
18 absence of some kind of evidence from which it could draw such conclusions. Further, to  
19 stay the action now would only further delay by four months the discovery schedule for all  
20 parties. All would have to wait in a period of total unproductivity while the Town  
21 Defendants' motion was filed, briefed and decided. The fact of having the litigation open  
22 and non-functioning would have its costs for all parties, would save the Town Defendants  
23 little, and would cost the other parties much. The Town Defendants' motion is denied.

24         Counsel for Plaintiff requests attorneys' fees incurred in responding to the Motion.  
25 While he presents some basis for his motion, the Court is not convinced that counsel for  
26 Plaintiff has not also contributed to the creation of an unprofessional environment that has  
27 lately taken hold of this litigation. In its discretion, therefore, the Court declines to award  
28 such fees. Accordingly,

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**IT IS HEREBY ORDERED** denying the Town Defendants' Motion to Stay Discovery (Dkt. # 60), and denying Plaintiff's request for attorneys' fees incurred in responding to the Motion.

DATED this 15th day of April, 2010.

  
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G. Murray Snow  
United States District Judge