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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Garrett Miller-Cunningham,

10 Plaintiff,

11 v.

12 Michael MacAllister, et al.,

13 Defendants.  
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No. CV-17-02098-PHX-JAT

**ORDER**

15 Pending before the Court is Defendants' motion (Doc. 15) for relief from the  
16 MIDP order (Doc. 4). In that motion, counsel states "Defendants have filed a motions  
17 [sic] to dismiss based on qualified immunity." (Doc. 15 at 1). In reality, one Defendant,  
18 Michael MacAllister, has filed a motion to dismiss based on qualified immunity. The  
19 other Defendant, Pinal County, has filed a motion to dismiss for failure to state a claim.

20 The MIDP order makes clear that motions to dismiss for failure to state a claim are  
21 not a basis to not answer or not proceed with the mandatory discovery. (Doc. 4 at 5).  
22 Therefore, discovery must proceed consistent with the MIDP order as to Defendant Pinal  
23 County.<sup>1</sup>

24 As to Defendant Michael MacAllister, the Court has the discretion to defer the  
25 time to answer and to begin discovery because Defendant MacAllister has filed a motion  
26 to dismiss based on qualified immunity. (Doc. 4 at 5 ("The Court may defer the time for  
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28 <sup>1</sup> Pinal County seemingly has acknowledged this, as it answered in addition to  
filing a motion to dismiss.

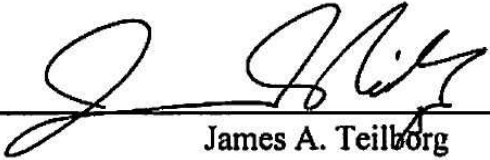
1 filing such pleadings, for good cause, while it considers a motion to dismiss based on  
2 lack of subject-matter jurisdiction, lack of personal jurisdiction, sovereign immunity, or  
3 absolute or qualified immunity of a public official.”)). Preliminary, the Court rejects  
4 Defendants’ implied argument that the MIDP order allows this Court to delay mandatory  
5 discovery as to ALL Defendants (including answering Defendants) if any ONE  
6 Defendant files a motion to dismiss based on qualified immunity.

7 Further, the Court declines to delay the filing of an answer, which then triggers  
8 compliance with the mandatory discovery, in this case. As noted above, the parties must  
9 comply with the MIDP order with respect to Defendant Pinal County; therefore, the  
10 Court does not see any efficiency in delaying discovery surrounding the same incident as  
11 to Defendant MacAllister. Thus, the Court finds no good cause to delay the time to  
12 answer. Accordingly,

13 **IT IS ORDERED** that the motion for relief from the MIDP order (Doc. 15) is  
14 denied.

15 **IT IS FURTHER ORDERED** that Defendant MacAllister must answer by the  
16 deadline the answer was originally due, or by August 25, 2017, whichever is later.

17 Dated this 23rd day of August, 2017.

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22 James A. Teilborg  
23 Senior United States District Judge  
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