

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00578-REB-KLM

SCOTT MASON,

Plaintiff,

v.

STEVE HARTLEY, Warden Fremont Corr. Fac.,
MR. HUGHES, Commander FCF S.E.R.T.,
C/O FRANCIS, FCF S.E.R.T., and
J. DOE, FCF Health Serv. Admin.,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Defendants' **Motion to Stay Discovery Pending Resolution of Qualified Immunity Defense Asserted in Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)** [Docket No. 21; Filed June 7, 2011] (the "Motion"). On June 6, 2011, Defendants filed a Motion to Dismiss [Docket No. 20] in which they contend that they are entitled to qualified immunity from liability. Defendants now seek a stay of discovery until the Motion to Dismiss is resolved. *Motion* [#21] at 2 ("Once asserted, until the issue of qualified immunity is resolved, discovery should not be allowed." (citing *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) ("Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery."))).

The Court has not yet held a scheduling conference in this case. Accordingly, no discovery parameters or case management deadlines have been set. A Scheduling Conference is set for August 18, 2011 at 10:00 a.m. *Minute Order* [Docket No. 18]. The Court finds that proceeding with discovery before this Conference is unwarranted. If Defendants' Motion to Dismiss [#20] remains pending at the time of the Scheduling Conference, they may re-file a motion seeking a discovery stay.

IT IS HEREBY **ORDERED** that the Motion [#21] is **GRANTED in part** to the extent that it seeks to preclude discovery prior to the Scheduling Conference.

IT IS FURTHER **ORDERED** that the Motion [#21] is otherwise **DENIED without prejudice**.

IT IS FURTHER **ORDERED** that the parties shall not engage in discovery until after the Scheduling Conference on August 18, 2011.

DATED: June 8, 2011 at Denver, Colorado.

BY THE COURT:

s/ Kristen L. Mix
Kristen L. Mix
United States Magistrate Judge