

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

MICHAEL ANDERSON,

Plaintiff,

-vs-

Case No. 2:10-cv-111-FtM-36SPC

CITY OF NAPLES; NAPLES POLICE
DEPARTMENT; RALPH ANTHONY,

Defendants.

ORDER

This matter comes before the Court on Plaintiff's Motion to Compel Answer from Defendants (Doc. #45) filed on November 8, 2010. Also before the Court is Plaintiff's Motion to Stay Discovery (Doc. #46) filed on November 8, 2010. Plaintiff *pro se* moves the Court to compel Defendants to file an Answer to his Amended Complaint. Plaintiff filed his Amended Complaint with the Court on March 17, 2010 (Doc. #8) and the Defendants were served with process on April 12, 2010 (Docs. #11, 12, 13). On April 27, 2010 (fifteen days after service), Defendants filed a Motion to Dismiss and for a More Definite Statement (Doc. #14) that remains pending.

Pursuant to Federal Rule of Civil Procedure 12(b), a motion to dismiss for failure to state a claim upon which relief can be granted must be filed before pleading. Thus, an Answer is not required by Rule 12 if a motion to dismiss is filed and pending. Therefore, Plaintiff's Motion to Compel is due to be denied.

Plaintiff's request to stay discovery until Defendant files an Answer is also due to be denied. If Plaintiff wishes to stop certain discovery and depositions from going forward, he may file a motion for protective order with the Court, but discovery will proceed in this case.

Accordingly, it is now

ORDERED:

Plaintiff's Motion to Compel Answer from Defendants (Doc. #45) is **DENIED**.

Plaintiff's Motion to Stay Discovery (Doc. #46) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 9th day of November, 2010.


SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record