

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**BERNARD DELCARPIO (#119047)**

**CIVIL ACTION**

**VERSUS**

**N. BURL CAIN, ET AL.**

**NO. 13-0273-SDD-RLB**

**ORDER**

This matter comes before the Court on the plaintiff's "Motion to Reset Deadlines for Discovery and Filing Motion for Summary Judgment and Motion to Dismiss or Defer Defendants' Motion for Summary Judgment" (Rec. Doc. 18), pursuant to which the plaintiff seeks (1) additional time within which to propound written discovery and (2) an extension of the deadline imposed by the Court for the filing of cross-motions for summary judgment. This Motion is opposed.

The plaintiff's Motion shall be denied. Pursuant to Order dated June 16, 2013 (Rec. Doc. 8), the Court directed the defendants, upon service, to file into the record of this proceeding documentation deemed pertinent to the plaintiff's claims. The Court's Order further directed the parties to complete discovery within ninety (90) days of the defendants' first appearance and to file cross-motions for summary judgment within one hundred and twenty (120) days of such appearance. The Court's Order also authorized the parties to engage in additional limited discovery as stated therein.

Pursuant to an Answer filed herein on January 13, 2014 (Rec. Doc. 14), the defendants formally appeared in this proceeding. In addition, pursuant to a submission filed herein on January 16, 2014 (Rec. Doc. 15), the defendants complied with the Court's Order by filing into

the record documentation deemed pertinent to the plaintiff's claims. Finally, on March 19, 2014, the defendants filed a Motion for Summary Judgment (Rec. Doc. 17), seeking a dismissal of the plaintiff's claims.

The plaintiff has not propounded additional discovery as authorized by the Court. Instead, on or about April 7, 2014, approximately one week prior to conclusion of the 90-day discovery period authorized by the Court, the plaintiff filed the instant Motion to Reset Deadlines. The plaintiff complains therein that the defendants' pending Motion for Summary Judgment is premature because it was filed *during* the allowed discovery period, and the plaintiff requests additional time within which to complete discovery and to file his own motion for summary judgment. In the Court's view, the plaintiff's Motion comes too late. The Motion is not accompanied by any proposed written discovery for the Court's review, and the plaintiff has provided no reasonable justification for his failure to pursue discovery during the discovery period.<sup>1</sup> Accordingly,

**IT IS ORDERED** that the plaintiff's "Motion to Reset Deadlines for Discovery and Filing Motion for Summary Judgment and Motion to Dismiss or Defer Defendants' Motion for Summary Judgment" (Rec. Doc. 18) be and it is hereby **DENIED**. The plaintiff is advised that

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1. On or about February 7, 2014, the plaintiff submitted for filing a Traverse in response to the defendants' Answer. *See* Rec. Doc. 16. The plaintiff apparently believed that he could await a Ruling from the Court in connection with that Traverse and that he would be allowed to engage in discovery after such Ruling. *See* Rec. Doc. 20 at p. 2-3. Notwithstanding, the referenced Traverse did not constitute a motion which necessitated any ruling by the Court, and the filing of the Traverse did not otherwise extend the discovery period authorized by the Court. Had the defendants filed a motion to dismiss wherein they asserted the defense of qualified immunity, discovery may well have been stayed in this proceeding pending a ruling relative to that motion. *See, e.g., Wicks v. Mississippi State Employment Services*, 41 F.3d 991, 994 (5<sup>th</sup> Cir. 1995), *citing Lion Boulos v. Wilson*, 834 F.2d 504, 507 (5<sup>th</sup> Cir. 1987). However, in the absence of any assertion by the defendants that they sought to avoid the burden of discovery, the plaintiff was not entitled to simply ignore the 90-day discovery period imposed by the Court.

he may file a cross-motion for summary judgment or an opposition to the defendants' pending Motion for Summary Judgment within thirty (30) days of the date of this Order.

Signed in Baton Rouge, Louisiana, on May 19, 2014.



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**RICHARD L. BOURGEOIS, JR.**  
**UNITED STATES MAGISTRATE**