

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 GEORGE-JASON A. HELM,

10 Plaintiff,

11 v.

12 MICHAEL HUGHES, et al.,

13 Defendants.

No. 09-5381 RJB/KLS

ORDER GRANTING DEFENDANTS'
MOTION TO STAY DISCOVERY

14 Before the Court is Defendants' motion to stay discovery of this matter pending
15 resolution of their pending motion to dismiss. Dkt. 16. For the reasons stated below, the Court
16 finds that the motion should be granted.

17 **PROCEDURAL BACKGROUND**

18 On June 24, 2009, Plaintiff, George-Jason Helm, filed a proposed civil rights complaint
19 as well as a motion for leave to proceed *in forma pauperis*. Dkt. 1. The court granted Plaintiff's
20 motion to proceed *in forma pauperis* and docketed his complaint on July 14, 2009. Dkts. 4 and
21 13. In his complaint, Plaintiff alleges that three DOC employees infringed on his constitutional
22 rights when he was infracted for writing a threat in a grievance. *Id.* Specifically, the Plaintiff
23 wrote "[t]his was abuse, abuse is violence, violence begets violence". Dkt. 13 at 4. Plaintiff
24 claims the infraction violated his First Amendment rights. *Id.* He seeks declaratory relief and
25 compensatory and punitive damages. *Id.* at 7.
26

ORDER GRANTING MOTION TO STAY DISCOVERY - 1

1 On October 16, 2009, Defendants filed a motion to dismiss pursuant to FRCP 12 (c). Dkt.
2 15. The motion to dismiss is noted for October 13, 2009. Mr. Helm has submitted discovery
3 requests of the three Defendants and those requests were returned due to the pending motion to
4 dismiss. Dkt. 16, Exh. 1. The parties attempted to meet and confer regarding the discovery and
5 whether Mr. Helm would agree to stay discovery until the Court could determine whether the
6 Defendants were entitled to qualified immunity. *Id.* Mr. Helm would not agree to stay
7 discovery, but was aware that this motion would be filed. *Id.*

9 On November 25, 2009, Plaintiff filed his response to the motion to dismiss. Dkt. 18.
10 On November 27, 2009, Plaintiff filed a motion to compel and for sanctions, for Defendants'
11 failure to respond to the discovery requests mentioned above. Dkt. 20.

12 DISCUSSION

13 The court has broad discretionary powers to control discovery. *Little v. City of Seattle*,
14 863 F.2d 681, 685 (9th Cir. 1988). Upon showing of good cause, the court may deny or limit
15 discovery. Fed. R. Civ. P. 26(c). A court may relieve a party of the burdens of discovery while
16 a dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989), amended at
17 906 F.2d 465 (9th Cir. 1990) *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984). When
18 government officials raise the issue of qualified immunity, discovery should not proceed until
19 this threshold issue is resolved by the court. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct.
20 2727, 2738 (1982); *Anderson v. Creighton*, 483 U.S. 635 646 n. 6, 107 S. Ct. 3034, 3042 n. 6
21 (1987), *DiMartini v. Ferrin*, supra, 889 F.2d at 926. The Harlow qualified immunity standard is
22 meant to protect public officials from the broad-ranging discovery that can be peculiarly
23 disruptive of effective government. *Harlow*, 457 U.S.at 817. For this reason, the Supreme Court
24 has emphasized that qualified immunity questions should be resolved at the earliest possible
25
26

1 stage of litigation, with a court first determining whether the acts defendants are alleged to have
2 taken are actions that a reasonable official could have believed lawful. *Anderson*, 483 U.S. at
3 646 n. 6. If they are not, and if the actions the defendants claim they took are different from
4 those the plaintiffs allege (and are actions that a reasonable official could have believed lawful),
5 then discovery may be necessary before a motion for summary judgment on qualified immunity
6 grounds can be resolved. *Id.*

7
8 The court agrees that the appropriate course where immunity issues are raised is to stay
9 all further discovery until the immunity issues are resolved or it is determined that limited
10 discovery may be required. Thus, all discovery, including any pending discovery motions, shall
11 be stayed pending the court's resolution of the pending motion to dismiss and the issue of
12 whether Defendants are entitled to qualified immunity.

13 Accordingly, it is **ORDERED**:

- 14 (1) Defendants' motion to stay discovery (Dkt. 16) is **GRANTED**.
15
16 (2) All discovery in this matter shall be **STAYED** pending further order of this Court,
17 including Plaintiff's motion for order compelling discovery and for sanctions (Dkt. 20).
18
19 (3) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

20 DATED this 10th day of December, 2009.

21
22 
23 Karen L. Strombom
24 United States Magistrate Judge
25
26