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3 .UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JAMES O'NEIL WIGGIN,

7 Plaintiff,

8 v.

9 WILLIAM ROLLINS, R. BEDNACZYK,
10 RICHARD ENDERS, BO GUESCHEL,
11 MARK BEITER, MARY KEPPLER,
12 ROBERTA KANIVE, TIM PANEK,
13 YELENA BROKHIS, SHERYL
14 ALBERT, FRANK LONGANO, KELLY
15 REMY MARTHA NEWLON, FRED
16 NAVARRO, J. DAVID KENNEDY,
17 STEVE HAMMOND, LONIE
18 FIGUEROA, JOHN DOMINOSKI,
19 RANDALL PIERCE, SARAH SMITH,
20 DEAN KAO, FLO FADELE, JOHN DOE
21 NOS. 1-2,

22 Defendants.

CASE NO. C13-5057 BHS/KLS

ORDER DENYING DEFENDANTS'
MOTION TO STAY DISCOVERY
AND GRANTING MOTION TO
STAY SUMMARY JUDGMENT

23 Defendants move the Court for an order staying all discovery pending resolution of their
24 motion for summary judgment, which is currently noted for June 28, 2013. ECF No. 33.

Plaintiff opposes the stay and asks the Court to stay Defendants' motion for summary judgment until completion of discovery. ECF No. 34. Plaintiff also filed a motion for extension of time to file a response to Defendants' motion (ECF No. 37) and motion to expedite his motion for extension (ECF No. 38). The Court finds that the motion to stay discovery should be denied and that Defendants' motion for summary judgment re-noted by the defendants after the parties have had an opportunity to engage in discovery.

1 **BACKGROUND**

2 On February 1, 2013, Plaintiff , filed a complaint against several Washington Department
3 of Corrections (DOC) employees regarding his medical care while incarcerated in the DOC.
4 ECF No. 5. He alleges he was injured on May 28, 2010 when he tried to cross the gymnasium
5 And accidentally collided with another offender who was playing handball. *Id.*, p. 5. Plaintiff
6 alleges that as a result of the collision, he suffers from a collapsed sinus wall and that due to this
7 injury, he is unable to sleep, has chronic headaches, and is blowing blood out of his nostrils. *Id.*,
8 p. 19. Plaintiff also alleges that the injury has caused him to have a constant parched mouth and
9 that he suffers from mental duress. *Id.*, p. 21. Plaintiff contends that Defendants were
10 deliberately indifferent to his medical needs in violation of his Eighth Amendment rights when
11 they denied him adequate medical care for his collapsed sinus wall. *Id.*, p. 23. He also alleges
12 that unidentified Defendants who were on duty in the gymnasium violated his Eighth
13 Amendment rights by failing to provide him with a safe passage across the gymnasium. *Id.*, p.
14 23. In addition to monetary damages, Plaintiff seeks declaratory and injunctive relief. *Id.*, p. 22.

15 On April 2, 2013, Defendants filed a motion for summary judgment arguing there was
16 no material issue of fact regarding the medical care provided to the Plaintiff and that the
17 Defendants are entitled to qualified immunity. ECF No. 23; ECF No. 24.

18 On April 23, 2013, Plaintiff filed a motion for extension of time to file his
19 response. ECF No. 26. Defendants did not oppose this motion (ECF No. 30), and it was
20 granted. ECF No. 31.

21 At the time Defendants filed their motion for summary judgment, discovery had not yet
22 begun. The discovery deadline of October 4, 2013 was established in the Court’s April 9, 2013
23 Scheduling Order. ECF No. 26. On April 29, 2013 and May 2, 2013, Plaintiff served
24 Defendants with discovery, but Defendants have not yet provided Plaintiff with answers. ECF

1 No. 33-1, Declaration of Candie M. Dribble, p. 1. On May 9, 2013, Defendants asked Plaintiff
2 to agree to a stay of discovery pending their motion for summary judgment because Defendants
3 had “capitulated to many of the items” in Plaintiff’s discovery request and Plaintiff “had direct
4 access to any additional medical records that were not included in the motion.” ECF No. 33-1,
5 Dribble Declaration, p. 2. When Plaintiff refused to agree to the stay, Defendants filed their
6 motion to stay on May 13, 2013. ECF No. 33.

7 DISCUSSION

8 The court has broad discretionary powers to control discovery. *Little v. City of Seattle*,
9 863 F.2d 681, 685 (9th Cir.1988). Upon showing of good cause, the court may deny or limit
10 discovery. Fed.R.Civ.P. 26(c). A court may relieve a party of the burdens of discovery while a
11 dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir.1989), *amended at*
12 *906 F.2d 465 (9th Cir.1990)* *Rae v. Union Bank*, 725 F.2d 478 (9th Cir.1984). When
13 government officials raise the issue of qualified immunity, discovery should not proceed until
14 this threshold issue is resolved by the court. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct.
15 2727, 2738, 73 L.Ed.2d 396 (1982); *Anderson v. Creighton*, 483 U.S. 635 646, 107 S.Ct. 3034,
16 97 L.Ed.2d 523 n .6, 483 U.S. 635, 107 S.Ct. 3034, 3042 n. 6, 97 L.Ed.2d 523 (1987), *DiMartini*
17 *v. Ferrin, supra*, 889 F.2d at 926. The *Harlow* qualified immunity standard is meant to protect
18 public officials from the broad-ranging discovery that can be peculiarly disruptive of effective
19 government. *Harlow*, 457 U.S.at 817.

20 However, *Harlow’s* qualified immunity discovery restriction is not applicable to
21 equitable relief. *See Hoohuli v. Ariyoshi*, 741 F.2d 1169, 1175–76 (9th Cir.1984). “A present
22 declaration of immunity from damage claims cannot avoid the diversion of [the officials’]
23 attention from other official duties which the litigation [of the equitable claims] will occasion.”
24 *Bever v. Gilbertson*, 724 F.2d 1083, 1087 (4th Cir.1984). Thus to the extent Plaintiff seeks

1 | discovery relating to his claims for equitable relief, Defendants’ request for a stay of discovery is
2 | without merit. As a practical matter, such a stay would be meaningful only if the damages
3 | discovery was significantly different from the discovery directed to the equitable claims. In this
4 | case it is not.

5 | Rule 56 also allows the court to issue an order, as is just, denying the motion for
6 | summary judgment or ordering a continuance for the opposing party to pursue discovery. Fed.
7 | R.Civ. P. 56. At the time Defendants filed their motion for summary judgment, discovery had
8 | not yet begun. In fact, the parties still have four months to complete discovery. ECF No. 26.
9 | Plaintiff served Defendants with discovery within one month after the Scheduling Order was
10 | issued, but Defendants have not yet provided their answers. ECF No. 33-1, Declaration of
11 | Candie M. Dribble, p. 1. Instead, Defendants asked Plaintiff to agree to a stay of discovery
12 | pending their motion because Defendants had “capitulated to many of the items” in Plaintiff’s
13 | discovery request and Plaintiff “had direct access to any additional medical records that were not
14 | included in the motion.” ECF No. 33-1, Dribble Declaration, p. 2. It is unclear to the Court
15 | what matters have been capitulated to and Plaintiff disputes his access to additional medical
16 | records. Without these records, Plaintiff argues that he cannot rebut Defendants’ motion, which
17 | is based on their contention that Plaintiff’s care was based on records and information available
18 | to them that suggested no further care was necessary for his sinus injury. He states that he has
19 | been given very limited access to his medical records and that Defendants have not produced all
20 | relevant medical records. He also seeks discovery relating to the defendants’ participation or
21 | non-participation in the medical committee decisions denying him treatment intervention for
22 | medication, referral to a specialist, nasal spray, and CT scan. ECF No. 35. With this discovery,
23 | he claims that he can determine which defendants can be deleted from his lawsuit.

1 While discovery would normally be stayed pending a ruling of qualified immunity, the
2 Court is not inclined to do so here where Plaintiff's claim is for the violation of clearly
3 established law. Defendants' claim to qualified immunity is based entirely on Plaintiff's failure
4 to provide proof that Defendants violated his Eighth Amendment rights. However, Plaintiff has
5 been denied a meaningful opportunity to conduct discovery and in particular, to discover any
6 facts or information necessary in drafting an opposition.

7 Accordingly, it is **ORDERED:**

8 1) Defendants' motion to stay discovery (ECF No. 33) is **denied**. Plaintiff's motion
9 to stay Defendants' motion for summary judgment until completion of discovery (ECF No. 34) is
10 **granted**.

11 2) The noting date of Defendants' motion for summary judgment (ECF No. 23) is
12 **stricken**. Defendants may re-file their motion following the completion of discovery.

13 3) Plaintiff's additional motions (ECF Nos. 37 and 38) are **denied as moot**.

14 **DATED** this 7th day of June, 2013.

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17 Karen L. Strombom
18 United States Magistrate Judge
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