UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Brian R. Calfano, Plaintiff, v. **The University of Cincinnati et al.** Defendants.	Case No.: 1:26-cv-00188-JPH Judge Jeffrey P. Hopkins

Plaintiff's Memorandum in Opposition to Defendants' Motion to Stay Discovery

The Court should deny Defendants' Motion to Stay Discovery Pending Resolution of Their Motion to Dismiss Plaintiff's Complaint ("Mot."). *See* R.8, PageID#198. Defendants seek extraordinary relief: they ask this Court to stay *all* discovery on *all* defendants in connection with *all* three of plaintiff Brian Calfano's claims. Defendants are not entitled to that relief.

Under the Federal Rules of Civil Procedure, discovery begins at the conclusion of the parties' Rule 26(f) conference. To obtain a stay, parties must identify special circumstances justifying that relief, and they must also show that a stay is justified after weighing "the burden of proceeding with discovery upon the party from whom discovery is sought against the hardship which would be worked by a denial of discovery." *Array of Soap, LLC v. Magnolia Soap & Bath Co. FRCH, LLC*, 2026 WL 617336, *2 (S.D. Ohio Mar. 5, 2026). Defendants cannot make either showing. They identify just two purported special circumstances: (1) their filing of a Rule 12(b)(6) motion and (2) *some* Defendants' invocation of qualified-immunity as to *some* claims. The pendency of a Rule 12(b)(6) motion, standing alone, is legally insufficient to justify a stay. *Mitchell v. Ohio State Univ.*,

2020 WL 548326, *2 (S.D. Ohio Feb. 3, 2020). While the assertion of qualified immunity may justify the stay of discovery *as to claims subject to a qualified-immunity defense*, it does not justify a stay of discovery regarding claims *not* subject to a qualified-immunity defense. *In re Flint Water Cases*, 960 F.3d 820, 826 (6th Cir. 2020). That proves dispositive here.

No Defendant can raise or has raised a qualified-immunity defense to Dr. Calfano's second count, which seeks relief against the University of Cincinnati for Title IX violations. As for the remaining counts, which Dr. Calfano filed against eight individual defendants, qualified-immunity cannot be and has not been raised as a defense against the official-capacity suits to which five of the individual defendants are subject. Defendants' invocation of qualified immunity therefore cannot justify the blanket stay they seek. Beyond this, the balance of harms does not justify a stay: while the discovery Dr. Calfano seeks will impose only ordinary discovery burdens on Defendants, an indefinite delay of *all* discovery will indefinitely prolong this litigation, forestalling Dr. Calfano's ability to secure the reputational vindication that only a final judgment can bring.

Legal Standard

Although "parties routinely move to stay discovery while a motion to dismiss is pending," courts "must 'tread carefully in granting'" such relief, "since a party has a right to a determination of its rights and liabilities without undue delay." *EC New Vision Ohio, LLC v. Genoa Twp.*, 2023 WL 4491768, *1–2 (S.D. Ohio July 12, 2023) (quoting *Young v. Mesa Underwriters Specialty Ins. Co.*, 2020 WL 7407735, *2 (S.D. Ohio Oct. 19, 2020)). Thus, "as a general rule, this Court is not inclined to stay discovery while a motion to dismiss is pending." *Id.* (quoting *Shanks v. Honda of Am. Mfg.*, 2009 WL 2132621, at *1 (S.D. Ohio July 10, 2009)). To obtain a stay, the moving party must establish that "special circumstances" justify relief, *id.* (quoting *Shanks*, 2009 WL 2132621 at *1). And even where the moving party identifies special circumstances, the court must weigh "the burden of proceeding with discovery upon the party from whom discovery is sought against the hardship which would be worked by a denial of discovery." *Id.* (quoting *Ohio Valley Bank Co. v. MetaBank*, 2019 WL 2170681, *2 (S.D. Ohio May 20, 2019)).

Background

The parties held their Rule 26(f) conference on March 26, 2026. They agreed to exchange initial disclosures by May 15, 2026, and have already submitted a protective order to the Court governing the exchange of confidential information. The Rule 26(f) report shows that much of the expected discovery is directed toward the University of Cincinnati as an institution, and is therefore not uniquely tied to individual-capacity damages claims. The requested discovery includes, for example, communications among Defendants and University officials; Article 9 records; Title IX investigation records; DEI hiring policies; Plaintiff's personnel and employment records; Cincinnati Enquirer public-records issues; Fox 43 communications; and governance documents.

Argument

The Court should deny Defendants' motion to stay discovery pending the resolution of their motion to dismiss. Defendants have not carried—and have barely tried to carry—their burden of establishing that the blunderbuss stay they seek is justified. Specifically, Defendants identify no "special circumstances" justifying a stay of *all* discovery pending the resolution of their Rule 12 motion. *Shanks v. Honda of Am. Mfg.*, 2009 WL 2132621, at *1 (S.D. Ohio July 10, 2009). Nor have they established that indefinitely halting all discovery efforts is justified by a weighing of the benefits and burdens. *Ohio Valley Bank Co. v. MetaBank*, 2019 WL 2170681, *2 (S.D. Ohio May 20, 2019). This response brief addresses these independently fatal defects in turn.

I. No special circumstances justify staying all discovery pending a resolution of Defendants' motion to dismiss for failure to state a claim.

Recall, Defendants' motion to stay discovery does not seek a limited or partial stay. Instead, Defendants seek to stay *all* discovery until this Court rules on Defendants' motion to dismiss the case under Rule 12(b)(6). Defendants offer no sound justification for their request.

By default, the Federal Rules of Civil Procedure empower parties to begin discovery upon the conclusion of the Rule 26(f) conference. Fed. R. Civ. P. 26(d)(1). By promptly beginning discovery, parties help secure a speedy resolution to litigation and ensure that all sides receive "a determination of [their] rights and liabilities without undue delay." *Young v. Mesa Underwriters Specialty Ins.*

Co., 2020 WL 7407735, *2 (S.D. Ohio Oct. 19, 2020). In keeping with this, parties seeking to stay discovery must identify "special circumstances" that make a stay appropriate. *Shanks*, 2009 WL 2132621 at *1.

Here, Defendants identify two circumstances that, they believe, justify a stay. Neither does.

A. The fact that Defendants have filed a Rule 12 motion does not justify a stay of discovery.

Defendants' first argument rests on the fact that they have filed a Rule 12(b)(6) motion "rais[ing] issues that are fundamentally legal and are resolved by examining the Complaint itself." Mot.5. According to Defendants, "there is no need to develop a factual record in order to rule" on their motion. *Id.*

Defendants' argument fails as a matter of law.

As an initial matter, *all* motions for relief under Rule 12(b)(6) seek dismissal on purely legal grounds. "The purpose of Rule 12 (b)(6) is to allow a defendant to test whether, as *a matter of law*, the plaintiff is entitled to *legal relief* if all the facts and allegations in the complaint are taken as true." *Hemsath v. J. Herschel Kendrick Moving & Storage*, 2006 WL 1000189, *1 (S.D. Ohio Apr. 14, 2006) (emphasis added). For that reason, courts adjudicating a motion to dismiss "generally may not consider any facts outside the complaint and exhibits attached thereto." *Passa v. City of Columbus*, 123 Fed. App'x 694, 697 (6th Cir. 2005).

Although Rule 12(b)(6) motions always test legal sufficiency, the filing of such a motion, by itself, does not justify a stay of discovery. *See, e.g.*, *Mitchell*, 2020 WL 548326 at *2 ("Defendants' insistence that their Motion to Dismiss is meritorious is likewise insufficient where, as here, the Court cannot conclude that Plaintiffs' claims are frivolous or that it is highly likely that Defendants' Motion to Dismiss will be granted."); *see also Dummen NA, Inc. v. Proven Winners N. Am. LLC*, No. 2:16-CV-000709, 2017 WL 4868201, at *1–2 (S.D. Ohio May 3, 2017) (noting that it is "unp[er]suasive for a party to rely on the strength of the motion to dismiss in moving for a motion to stay, unless the complaint is clearly frivolous," and that courts are "not inclined to grant a stay based on one party's view of the strength of its Motion to Dismiss"). To hold otherwise would read into Rule 12

a requirement to stay discovery upon the filing of a Rule 12(b)(6) motion seeking dismissal of all claims. Yet the drafters of Rule 12 included no such requirement. In fact, the presumption under Rule 26(f) is the *opposite*: that discovery will begin immediately upon the conclusion of a Rule 26(f) conference. *See* Fed. R. Civ. P. 26(d)(1).

Perhaps sensing this, Defendants stress that *their* Rule 12 motion is strong. That is both incorrect and irrelevant. Defendants are incorrect because, for all the reasons laid out in Dr. Calfano's response to Defendants' motion to dismiss, none of Dr. Calfano's claims may be dismissed under Rule 12(b)(6). And Defendants' argument is irrelevant because "the strength of [a] Motion to Dismiss … does not constitute grounds for a stay of discovery." *Mitchell*, 2020 WL 548326 at *3.

To sum up, Defendants' primary ground for seeking a stay fails as a matter of law.

B. Defendants' assertion of qualified immunity does not justify the broad relief they seek.

Defendants next stress that *some* of them have asserted qualified immunity from *some* of Dr. Calfano's three counts—namely, Counts I and III, which allege First Amendment retaliation and civil conspiracy. Defendants believe this entitles them to stay *all* discovery against *all* defendants in this case. Indeed, they argue that their Rule 12 motion's invocation of qualified immunity requires the stay they seek. Defendants are incorrect.

1. Qualified immunity protects government officials from "unnecessary and burdensome discovery or trial proceedings" on claims to which the defense applies. *In re Flint Water Cases*, 960 F.3d 820, 826 (6th Cir. 2020) (quoting *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)). Critically, however, the qualified-immunity defense is "available only to individual government officials sued in their personal capacity." *United Pet Supply, Inc. v. City of Chattanooga, Tenn.*, 768 F.3d 464, 484 (6th Cir. 2014). The doctrine does not apply at all to official-capacity claims, such as the official-capacity suits Dr. Calfano filed against five of the eight individual defendants in this litigation. *See id*. Nor does qualified immunity apply to government entities, *id*., including the University of Cincinnati.

True, when an officer sued in his individual capacity asserts a qualified-immunity defense, his doing so has some bearing on discovery. The defense, where applicable, protects defendants not just from liability, but also from "unnecessary and burdensome discovery or trial proceedings." *In re Flint Water Cases*, 960 F.3d at 826. Crucially, however, the assertion of a qualified-immunity defense as to particular claims does *not* justify a stay as to *all* matters. *See id.* Instead, courts should generally permit the plaintiff to conduct discovery that can be justified without regard to those claims. *See id*.

In re Flint Water Cases illustrates how these rules work in practice. 960 F.3d at 826. There, the Sixth Circuit affirmed a discovery order allowing plaintiffs to conduct discovery against parties seeking to dismiss claims against them on qualified-immunity grounds. It reasoned that the parties in question could be deposed or made to turn over documents for claims not subject to their qualified immunity defense. *Id*. at 826–27. The lesson of *In re Flint Water Cases* is this: the pendency of a motion to dismiss on qualified-immunity grounds does not entitle defendants to a stay from discovery on claims to which qualified immunity does not apply.

The same claim-specific rule appears repeatedly in this Court's decisions. In *Mitchell*, the court allowed Title VII and Title IX discovery against Ohio State University to proceed even though individual defendants raised immunity defenses. 2020 WL 548326, at *3-4. In *Peterson*, the Court stayed only discovery pertaining solely to individual-capacity money-damages claims and allowed all other discovery to proceed. 2022 WL 4151370, at *3-4. In *Fisher*, the Court stayed only discovery on Section 1983 claims subject to qualified immunity, allowing all other discovery to proceed. 2024 WL 4134849, at *3-4. And in *Roth*, which Defendants cite, the court denied a blanket stay and held that qualified immunity does not stop discovery on claims to which qualified immunity does not apply. 2009 WL 2579388, at *2-3.

2. Under these principles, the Court should deny Defendants the broad stay they seek. Dr. Calfano's complaint raises three claims: Counts I and III seek relief against eight individuals for violations of the First Amendment and for civil conspiracy, while Count II seeks relief against the University of Cincinnati for violations of Title IX. All three counts are asserted against at least

some defendants who cannot, and have not, sought dismissal on qualified-immunity grounds. Accordingly, discovery on those defendants relating to counts not subject to qualified-immunity defenses is justified even if one assumes other defendants could prevail on the immunity arguments they raise. *See in re Flint*, 960 F.3d at 826.

Begin with Count II, which seeks relief only against the University of Cincinnati. The University cannot raise, and has not raised, a qualified-immunity defense. *United Pet Supply,* 768 F.3d at 484; *accord Adams v. Blount Cnty., Tennessee*, 2018 WL 4870604, *3 (E.D. Tenn. June 21, 2018) ("Insofar as the defendants' motions seek a stay of discovery from Blount County … it is well-established that the defense of qualified immunity is not available to a governmental entity …. Therefore, Blount County … [is] not entitled to a stay of discovery based on the doctrine of qualified immunity"). And the fact that *other* Defendants have raised qualified-immunity defenses to *other* claims cannot justify staying discovery as to the University of Cincinnati on Count II. *See In re Flint Water Cases*, 960 F.3d at 826–27. Nor does other Defendants' assertions of qualified-immunity justify a stay of discovery with respect to *those* Defendants insofar as they have knowledge pertaining to Count II. Recall that the plaintiffs in *In re Flint Water Cases* were allowed to conduct discovery against defendants claiming qualified-immunity because the discovery in question could be justified independent of the claims subject to a qualified-immunity defense. *See id.* So too here: Dr. Calfano may seek discovery from individual defendants in this case where that discovery can be justified based on Count II alone. *See id.* At the very least, Defendants have not carried their burden of showing that *some* defendants' assertions of qualified immunity as to Counts I and III justifies a stay of discovery with respect to Count II.

Much the same is true for Counts I and III. Dr. Calfano brought these counts against eight defendants. He sued three (Ferme, Lyles, on Jonason) in their individual capacities alone, but sued five others (Bates, Mack, Miller, Follings, and Wohlfarth) in *both* their individual and official capacities. The latter group cannot seek, and have not sought, qualified immunity with respect to the official-capacity claims. *United Pet Supply,* 768 F.3d at 484. Thus, their assertion of qualified-immunity as to the personal-capacity claims does not justify a stay of discovery: Dr. Calfano is entitled

to seek discovery on the official-capacity claims notwithstanding the assertion of qualified immunity as to the personal-capacity suits. *See Adams*, 2018 WL 4870604, *3 (stay of discovery based on qualified-immunity defenses not justified with respect to official-capacity claims). While Ferme, Lyles, and Jonason would have had a better argument for a stay of discovery *limited to them*, Defendants have not sought this tailored relief, but rather sought a blanket stay of discovery as to all Defendants. Regardless, Defendants never contest that these individuals have discoverable information relating to claims *not* subject to qualified-immunity defenses. Under *In re Flint Water Cases*, Dr. Calfano may seek to discover that information because it can be justified without regard to these three defendants' individualized qualified-immunity defenses. *See In re Flint Water Cases*, 960 F.3d at 826–27. At most, any stay would need to be limited to discovery requests seeking information from these defendants that bears exclusively on their own liability.

II. The balance of burdens and prejudice militate against a stay of discovery.

Defendants' request for a blanket stay of discovery is also unjustified by a weighing of "the burden of proceeding with discovery upon the party from whom discovery is sought against the hardship which would be worked by a denial of discovery." *Array of Soap*, 2026 WL 617336 at *2.

As an initial matter, "a discovery stay" of the sort Defendants seek "would prejudice Plaintiff[] by delaying the resolution of this case." *EC New Vision Ohio, LLC v. Genoa Twp.*, 2023 WL 4491768, *2 (S.D. Ohio July 12, 2023). Dr. Calfano alleges *ongoing* reputational and professional harms. As explained in his Complaint, the "stigma of unresolved sexual harassment allegations, amplified by a newspaper article, has effectively rendered Dr. Calfano unemployable in the two fields to which he devoted his professional life." Compl. ¶ 92. He also seeks prospective relief directed to ongoing injury from unresolved Article 9 and Title IX proceedings, the possibility of refiling, and further disclosures of allegations and investigative materials. *See* Compl. at 28–29 (prayer for relief). Only a final judgment in his favor will restore Dr. Calfano's reputation. Staying discovery pending the resolution of Defendants' motions to dismiss will forestall, perhaps by many months, that reputational restoration, further injuring Dr. Calfano.

Denying Defendants' request for a blanket stay, by contrast, will impose on Defendants only ordinary litigation burdens, which are not good cause for a blanket stay. *See e.g.*, *Array of Soap*, 2026 WL 617336, at *3-4; *Ohio ex rel. Yost v. Jones*, 2024 WL 5307135, at *4 (S.D. Ohio Dec. 17, 2024); *Wonser v. Norman*, 2025 WL 325511, at *4-5 (S.D. Ohio Jan. 29, 2025). Defendants have the full panoply of discovery protections available to them: they may raise valid objections, meet and confer, propose search terms and custodians, produce on a rolling basis, invoke Local Rule 37.1, and seek a protective order where appropriate.

Dr. Calfano has sought only written discovery in his first set of discovery requests: no interrogatories, 30 requests for production, and 16 requests for admission. He has not noticed any depositions and does not anticipate doing so until Defendants produce documents sufficient to allow for worthwhile depositions. Defendants' specious multiplication exercise—claiming 270 RFP responses and 144 RFA responses—suggests duplication at most, not undue burden. The requests largely seek centralized institutional records that can be addressed through coordinated production, objections, conferral, rolling production, and ordinary Rule 26 tools. All told, any burdens to Defendants from the requested discovery constitute run-of-the-mill discovery burdens that do not entitle them to a stay. *See e.g.*, *Array of Soap*, 2026 WL 617336, at *3-4; *Jones*, 2024 WL 5307135, at *4; *Wonser*, 2025 WL 325511, at *4-5.

Conclusion

The Court should deny Defendants' motion to stay discovery. In the alternative, any stay should be limited to those defendants being sued exclusively in their individual capacities: Ferme, Lyles, and Jonason.

May 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. I also emailed the foregoing to counsel of record for Defendants.

/s/ Shams H. Hirji
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