

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 10-81612-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

ORDER GRANTING DEFENDANT’S MOTION TO STAY DISCOVERY

THIS CAUSE is before the court upon defendant’s motion to stay discovery pending ruling on its motion to dismiss the amended complaint and/or strike [DE # 24]. Even though plaintiff sought and received two extensions of time to respond to the instant motion, plaintiff never filed a response in opposition. The court is thus forced to consider the instant motion without the benefit of a response from plaintiff.¹

District courts have broad discretion to managing pretrial discovery matters. *Perez v. Miami-Dade County*, 297 F.3d 1255, 1263 (11th Cir.2002). District courts may limit the scope of discovery or control its timing to protect a party from annoyance, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c). The filing of a potentially dispositive motion to dismiss before discovery weighs heavily in favor of issuing a stay. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir.1997) (“Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before

¹ The court notes that the failure to submit a response to a motion “may be deemed sufficient cause for granting the motion by default.” S.D. Fla. L. R. 7.1(C).

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discovery begins.). To determine whether to issue a stay, "it is necessary for the court to 'take a preliminary peek' at the merits of the motion to dismiss to see if it appears to be clearly meritorious and truly case dispositive." *Feldman v. Flood*, 176 F.R.D. 651, 652-53 (M.D.Fla.1997) (denying stay of discovery).

Here, defendant's motion to dismiss raises serious questions regarding standing and presents several facial challenges to the sufficiency of plaintiff's claims, and the standing issue is potentially dispositive of the entire action.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

Defendant's motion to stay discovery pending ruling on its motion to dismiss the amended complaint and/or strike [DE # 24] is **GRANTED**. Discovery in this case is **STAYED** while the court takes defendant's motion to dismiss under advisement.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this 19th day of July, 2011.


Daniel T. K. Hurley
United States District Judge

Copies provided to counsel of record