UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

JENNIFER HALL, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
	)	**Civil Action No. 07-S-484-NW**
vs.	)	
PAUL WHITE, and PHYLLIS THOMAS,	)	
Defendants.	)	

ORDER

This case, brought as a putative class action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq*., was filed on March 16, 2007.[1] Less than two months thereafter, defendants moved jointly to dismiss the complaint in full.[2] Within a matter of weeks of that filing, defendants took the unconventional step of *also* filing a motion for summary judgment, complete with affidavits.[3] As if those filings were not sufficient grist for this judicial mill, defendants recently moved preemptively to stay all discovery in this case, including

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[1] Doc. no. 1 (Complaint).

[2] Doc. no. 9 (Defendants' Motion to Dismiss).

[3] Doc. no. 18 (Defendants' Motion for Summary Judgment).

initial disclosures under Fed. R. Civ. P. 26, until such time as the court has ruled upon their potentially dispositive motions.[4]

Plaintiff has responded to this flurry of motions by opposing the dismissal request and the prayer for a stay,[5] and pleading for protection under Federal Rule of Civil Procedure 56(f) with respect to the motion for summary judgment.[6] In this order, the court will dispose of the Rule 56(f) motion and the motion for a stay, *seratim*.

I. PLAINTIFF'S RULE 56(f) MOTION

"As a general [but not inexorable] rule summary judgment should not be granted until the party opposing the motion has had an adequate opportunity to conduct discovery." *Reflectone, Inc. v. Farrand Optical Co.*, 862 F.2d 841, 843 (11th Cir. 1989) (bracketed alteration added). Reflecting this proposition, Rule 56(f) provides as follows:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits

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[4] Doc. no. 22 (Defendants' Motion to Stay).

[5] Doc. no. 23 (Plaintiff's Response in Opposition to Defendants' Motion to Stay); doc. no. 13 (Plaintiff's Response to Defendants' Motion to Dismiss); doc. no. 21 (Plaintiff's Sur-Response in Opposition to Defendants' Motion to Dismiss).

[6] Doc. no. 25 (Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment).

> to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f).

Plaintiff's Rule 56(f) request is properly supported with an affidavit from one of her attorneys which "contains specific facts explaining h[er] failure to respond to the adverse party's motion for summary judgment via counter affidavits establishing genuine issues of material fact for trial." *Barfield v. Brierton*, 883 F.2d 923, 931 (11th Cir. 1989). Specifically, defendants have thus far refused to permit *any* discovery, and plaintiff cannot reasonably be expected to respond to their affidavits without first having an opportunity to depose the affiants, to pour over pertinent documents, and to accumulate her own evidence contradicting defendants' version of the facts.[7] *Cf. Xerox Corp. v. Genmoora Corp.*, 888 F.2d 345, 354, (5th Cir. 1989) (holding that a Rule 56(f) motion should have been granted where the party opposing summary judgment "was not seeking *additional* discovery, but discovery *at all*") (emphasis supplied). Given the circumstances, this affidavit certainly suffices to "demonstrate how additional time will enable [plaintiff] to rebut movant's allegations of no genuine issue of fact." *Pasternak v. Lear Petroleum Exploration, Inc.*, 790 F.2d 828, 833 (10th Cir. 1986).

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[7] *See* doc. no. 25, Ex. A (Affidavit of J. Matthew Stephens), ¶¶ 4-5.

Accordingly, plaintiff's Rule 56(f) deferral request will be granted. Defendants' motion for summary judgment shall be denied, but without prejudice, and a similar motion may be re-filed after at least some discovery has been conducted — assuming, of course, that the case proceeds that far.

II. DEFENDANTS' MOTION TO STAY

In their motion to stay, defendants essentially argue that discovery prior to resolution of their dispositive motions will be wasteful, or at least potentially so. Moreover, they contend that "[t]here is no urgency in this purported nationwide class action for discovery issues to be addressed or resolved at this early stage."[8]

Although the court is not aware of any empirical evidence on the point, it seems that these sorts of motions are becoming increasingly common, at least in this District. Standards for addressing them are beginning to appear in civil practice disquisitions, and in the case law as well. Reflecting upon such requests, the authors of one treatise observe that:

> A motion to stay discovery is tantamount to a request for a protective order prohibiting or limiting discovery pursuant to [Federal Rule of Civil Procedure] 26(c). Such motions are not favored, since when discovery is delayed or prolonged it can create case management problems which impede the court's responsibility to expedite discovery and cause unnecessary litigation expenses and problems.

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[8] Doc. no. 22, ¶ 5.

10 *Federal Procedure*, *Lawyers' Edition* § 26:206 (2006).

This court is sympathetic to these sentiments, but it appears the Eleventh Circuit takes a slightly different view. While emphasizing, in general, that "district courts enjoy broad discretion in deciding how best to manage the cases before them," *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir. 1997), the Eleventh Circuit has nevertheless made clear that

> [f]acial 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 discovery begins*. Such a dispute always presents a purely legal question; there are no issues of fact because the allegations contained in the pleading are presumed to be true. Therefore, neither the parties nor the court have any need for discovery before the court rules on the motion.

Id. at 1367 (footnote and internal citations omitted) (emphasis supplied). *See also*, *e.g.*, *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006) (applying *Chudasama*).

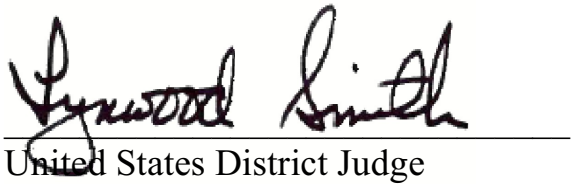
Therefore, it appears that the *only* proper course, when presented with a request to stay discovery pending resolution of a motion to dismiss, is to grant the stay. Plaintiff does not exactly dispute this point. Her opposition brief is focused on the prejudice that would flow from the court adjudicating the motion for *summary judgment* without first affording her the opportunity to engage in some semblance of discovery. In light of the court's ruling on plaintiff's Rule 56(f) request, these

arguments are moot. Having been presented with no other reasons to deny the stay, it is due to be granted.

III. CONCLUSION

In accordance with the foregoing, defendants' motion for summary judgment is DENIED without prejudice pursuant to Fed. R. Civ. P. 56(f), but may be re-filed at such a time (if there ever comes such a time) when sufficient discovery has been had. However, defendants' motion to stay the case pending resolution of dispositive motions is GRANTED, insofar as it requests a stay until the court issues a ruling on the motion to dismiss. It is accordingly ORDERED that the case is STAYED pending further directions from the court.

DONE this 22nd day of June, 2007.



United States District Judge