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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 CAPTAIN PAMELA BARNETT, *et al.*,) No. SACV 09-00082 DOC (ANx)
15)
16 Plaintiffs,)
17 v.) **EX PARTE APPLICATION FOR LIMITED**
18 BARACK H. OBAMA, *et al.*) **STAY OF DISCOVERY; MEMORANDUM OF**
19 Defendants.) **POINTS AND AUTHORITIES IN SUPPORT**
20) **THEREOF**
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EX PARTE APPLICATION

Defendants, by and through their undersigned counsel, hereby apply to this Court, on an *ex parte* basis, for an Order staying all discovery in this matter pending the Court's ruling upon Defendants' Motion to Dismiss, currently set for hearing on October 5, 2009, with the exception of discovery which Plaintiffs can demonstrate, to the satisfaction of the Court, that they need in order to counter said Motion.

This *Ex Parte* application will be based upon these moving papers, the Memorandum of Points and authorities filed herewith, and upon such other and further arguments, documents and grounds as may be advanced to the Court in the future. All requirements of the Local Rules for *ex parte* applications have been met, including the notice requirements of Local Rule 7-19 as more particularly contained within the accompanying Memorandum of Points and Authorities.

Respectfully submitted,

DATED: September 10, 2009

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/s/ Roger E. West
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Attorneys for Defendants

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF PERTINENT FACTS

4 On January 20, 2009, Plaintiffs' filed their Complaint in this
5 matter challenging the fitness for office of President Obama. Over
6 seven months later, on August 25, 2009, Plaintiffs finally effected
7 service of process. Soon thereafter, on September 4, 2009,
8 Defendants filed their Motion to Dismiss with a hearing set for
9 October 5, 2009.

10 In their Motion to Dismiss, Defendants maintain that this
11 Court is without subject matter jurisdiction. As more fully
12 explained in that Motion, and among other reasons, the operative
13 complaint fails to confer subject matter jurisdiction for several
14 reasons: (1) The Plaintiffs lack standing because they cannot show
15 the required injury-in-fact or the required redressability to
16 confer jurisdiction; (2) The case presents non-justiciable
17 political questions which are committed, by the very text of the
18 Constitution, to a different branch of Government; (3) Plaintiffs
19 are not authorized to pursue a Quo Warranto action against the
20 President of the United States; (4) Neither 42 U.S.C. § 1983 nor 42
21 U.S.C. § 1988 confers jurisdiction; and, (5) Plaintiffs' Freedom of
22 Information Act claims as a matter of law do confer jurisdiction.
23 Any one of these grounds is sufficient to stay discovery pending a
24 resolution of the Motion.

25 On September 8, 2009, the Court convened a hearing upon issues
26 which are unrelated to the Motion to Dismiss. At that hearing, the
27 Court granted Defendants leave to file this *Ex Parte* application.

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1 II.

2 ARGUMENT

3 DISCOVERY SHOULD BE STAYED PENDING RESOLUTION OF
4 WHETHER PLAINTIFFS' CLAIMS CONFER SUBJECT MATTER JURISDICTION

5 A District Court enjoys broad discretion in controlling
6 discovery. Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir.
7 1988); Blackburn v. United States, 100 F.3d 1426, 1436 (9th Cir.
8 1996) (and cases cited therein).

9 Where, as here, there is pending a motion attacking the
10 subject matter jurisdiction of the court, a threshold issue in the
11 absence of which the court cannot proceed to hear other issues, "it
12 is a recognized and appropriate procedure for a court to limit
13 discovery proceedings at the outset to a determination of
14 jurisdictional matters." Blackburn v. United States, supra, 100
15 F.3d at 1436 (quoting United States Catholic Conference v. Abortion
16 Rights Mobilization, Inc., 47 U.S. 72, 79-80, 108 S.Ct. 2268, 2272-
17 73, 101 L.Ed.2d 69 (1988)). In Blackburn, the Ninth Circuit upheld
18 the decision of this Court per Judge Stotler, which limited
19 discovery solely to the threshold jurisdictional issues for a time
20 period of 120 days. See Id.

21 Cases are legion which recognize that, once a dispositive
22 motion has been filed, discovery should be limited to only those
23 issues raised in that dispositive motion. See, e.g. Jarvis v.
24 Regan, 833 F.2d 149, 155 (9th Cir. 1987); Sprague v. Brook, 149
25 F.R.D. 575, 577 (and cases cited therein) (N.D. Ill. 1993); Chavous
26 v. District of Columbia Financial Responsibility, etc., et al., 201
27 F.R.D. 1 (D.D.C. 2001); Cromer v. Braman, __ F.Supp.2d __, 2007 WL
28 3346675 (W.D. Mich. 2007) ("A trial court has broad discretion and

1 inherent power to stay discovery until the preliminary questions
2 that may dispose of the case are determined") (citation omitted)
3 and also ("A stay of discovery pending the determination of a
4 dispositive motion 'is an eminently logical means to prevent
5 wasting the time and effort of all concerned and to make the most
6 efficient use of judicial resources'") (citations omitted).

7 Currently pending before this Court for hearing on October 5,
8 2009, is Defendants' Motion to Dismiss, a dispositive motion
9 setting forth, among other things, the reasons why Plaintiffs'
10 First Amended Complaint cannot, as a matter of law, confer subject
11 matter jurisdiction on this Court. As the cases cited above make
12 clear, because subject matter jurisdiction is a threshold issue
13 challenging the very power of this Court to proceed, discovery
14 should be stayed until such time as this Court determines whether
15 it has jurisdiction over Plaintiffs' claims. See, e.g., Blackburn,
16 100 F.3d at 1436 and cases cited therein. A stay would also not
17 waste the resources of this Court or of the parties. See, e.g.,
18 Cromer, 2007 WL 3346675 and cases cited therein.

19 On September 10, 2009, counsel for Defendants notified each of
20 Plaintiffs' counsel pursuant to Local Rule 7-19 of the substance of
21 this *ex parte* application. Plaintiffs' counsel Dr. Orly Taitz
22 stated that she opposed this application as did Plaintiffs' counsel
23 Gary Kreep. It should be noted, however, that no apparent
24 prejudice will result from granting this *ex parte* application for a
25 stay of discovery until such time as the Court determines whether
26 it has subject matter jurisdiction. A seven month time period of
27 the Plaintiffs' own making lapsed between the filing of the
28 Complaint and the date when service of process was effected. Less

1 than two weeks then expired before Defendants' filed their
2 dispositive Motion to Dismiss on September 4, 2009. Granting this
3 *ex parte* application until Defendants' Motion can be heard on
4 October 5, 2009, will therefore stay discovery for approximately
5 one month. This stay is only one quarter of the 120 days approved
6 by the Ninth Circuit for the discovery stay in *Blackburn*. The only
7 parties prejudiced would be the Defendants if this Court were to
8 deny this *ex parte* application, as discovery would be allowed to
9 proceed on matters extraneous to subject matter jurisdiction.

10 It is respectfully submitted that this Court should enter an
11 Order herein staying all pending and future discovery, motion, and
12 other matters related thereto, pending resolution of the this
13 dispositive motion, with the exception of any discovery which
14 Plaintiffs can demonstrate, to the satisfaction of the Court, that
15 they need in order to counter said Motion.

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DATED: September 10, 2009

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