

CAUSE NO. 2018528740

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DOLCEFINO COMMUNICATIONS, LLC DBA DOLCEFINO CONSULTING, Plaintiff	§ § § § § § § § §	IN THE DISTRICT COURT OF LUBBOCK COUNTY, TEXAS 99 th JUDICIAL DISTRICT
vs.		
TEXAS TECH UNIVERSITY, Defendant		

**DEFENDANT’S OPPOSED SECOND MOTION TO STAY DISCOVERY
PENDING RESOLUTION OF JURISDICTIONAL MATTER**

TO THE HONORABLE JUDGE WILLIAM C. SOWDER:

Defendant Texas Tech University (“TTU”) files this Opposed Second Motion to Stay Discovery seeking to stay discovery until the Court resolves TTU’s pending Second Plea to the Jurisdiction based on Plaintiff’s failure to establish a waiver of sovereign immunity, which is a threshold jurisdiction matter. In support, TTU respectfully submits the following for consideration by this honorable Court:

I. BACKGROUND

The recent ruling in *Tex. Tech Univ. v. Dolcefino Communs.*, No. 07-18-00225-CV, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 (Tex. App.—Amarillo 2018, no pet.), the opinions by the Office of the Attorney General of Texas, and actions by Texas Tech University (“TTU”), deprived this Court of jurisdiction over Dolcefino Consulting’s (“Dolcefino”) remaining claims.¹

¹ See Def. Second Plea to the Jurisdiction filed with this Court.

First, the remaining requests in this litigation where Dolcefino failed to pay or object to TTU invoices—in accordance with Texas Government Code section 552.2615(b)—are withdrawn as a matter of law, depriving this Court of jurisdiction to further adjudicate the claims.

Second, Dolcefino cannot create jurisdiction over the remaining requests where TTU conducted a search and found no responsive documents.

Finally, TTU sought an opinion from the Office of the Attorney General (“OAG”), and subsequently produced all public information that was not excepted by the OAG opinion.

Because TTU has followed the requirements of the Public Information Act and Dolcefino has not, this Court lacks jurisdiction to adjudicate any remaining claims for public information in this case.

II. ARGUMENT AND AUTHORITY

A. A STAY OF DISCOVERY IS PROPER, PENDING RESOLUTION OF A JURISDICTIONAL CHALLENGE.

TTU raised sovereign immunity in its plea to the jurisdiction and respectfully requests that this Court resolve all jurisdictional matter before any discovery on the merits proceeds. “If a government entity validly asserts that it is immune from a pending claim, any court decision regarding that claim is advisory to the extent it addresses issues other than immunity, and the Texas Constitution does not afford courts jurisdiction to make advisory decision or issue advisory opinions.” *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 103 (Tex. 2012) (citing *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000); TEX. CONST. ART. IV, §§ 1, 22).

TTU seeks a formal stay of discovery pending the disposition of their plea. It is well within this Court's discretion to stay discovery pending resolution of a plea to the jurisdiction. *Ramon v. Teacher Retirement Sys. of Texas*, No. 01-09-00684-CV, 2010 WL 1241293, at *6 (Tex. App.—Houston [1st Dist.] April 1, 2010, pet. denied); *Williamson v. U.S. Dep't of Agriculture*, 815 F.2d 368 (5th Cir. 1987) (federal corollary case finding staying discovery proper when governmental defendant challenges jurisdiction); *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex.1999) (orig. proceeding). Discovery of claims barred by the absence of jurisdiction is improper. See *In re CMM Const. Co., Inc.*, No. 09-05-096 CV, 2005 WL 913438, at *2 (Tex. App.—Beaumont April 21, 2005, orig. proceeding) (holding that trial court should not permit discovery on matters unrelated to determination of jurisdictional issues, prior to conducting a hearing or ruling on the merits of a motion to abate).

TTU reasonably anticipates Plaintiff will seek discovery in this matter.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Texas Tech University respectfully requests that their motion to stay discovery be granted thereby staying discovery pending resolution of its pending Plea to the Jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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