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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

FEDERAL TRADE COMMISSION, and UTAH
DIVISION OF CONSUMER PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC; CARLSON DEVELOPMENT
GROUP, LLC; CJ SEMINAR HOLDINGS,
LLC; ZURIXX FINANCIAL, LLC;
CRISTOPHER A. CANNON; JAMES M.
CARLSON; and JEFFREY D. SPANGLER,

Defendants.

**DEFENDANTS' MOTION TO STAY
DISCOVERY PENDING OUTCOME OF
MOTION TO DISMISS**

Case No.: 2:19-cv-00713-DAK-CMR

Judge Dale Kimball

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and DUCivR 37-1, Defendants, by counsel, move to stay discovery pending the outcome of their Motion to Dismiss. As explained in the Attorney Planning Meeting Report (Dkt. 66), the parties met and conferred on November 20 and December 4, 2019, and agree that they are at an impasse.

“It is well settled that the district court has the power to stay proceedings pending before it and to control its docket for the purpose of economy of time and effort for itself, for counsel, and for litigants.” *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963). This decision “ordinarily lies within the discretion of the district court.” *Id.* In exercising this discretion, the Court “must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).

Notable to the posture here, the “court has broad inherent power to stay discovery until preliminary issues can be settled which may be dispositive of some important aspect of the case.” *Matrix Grp., LLC v. Innerlight Holdings, Inc.*, No. 2:11-CV-00987, 2012 WL 5397118, at *4 (D. Utah Nov. 5, 2012). In fact, motions to stay discovery pending resolution of dispositive motions are generally favored and a short stay in this case “is an eminently logical means to prevent wasting the time and effort” of the Court, the counsel, and the litigants. *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance*, 201 F.R.D. 1, *2 (D.D.C. May 21, 2001); accord *Gilbert v. Ferry*, 401 F.3d 411, 415-16 (6th Cir. 2005); *Nankivil v. Lockheed Martin Corp.*, 216 F.R.D. 689, 692 (M.D. Fla. 2003).

Allowing a case to proceed through the pretrial processes with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system.

Chudasama v. Mazda Motor Corp., 123 F.3d 1353, 1368 (11th Cir. 1997).

In this case, the competing interests and the “economy of time and effort” for all parties and the Court weigh in favor of a brief stay. First, the pending Motion aims to limit the scope of, or eliminate entirely, the need for discovery. Second, as more fully explained in the Stipulated Motion for Scheduling Conference, *see* Dkt. 67, the parties have agreed to a stipulated preliminary injunction and Plaintiffs have already obtained, or have access to, all documents in Zurixx’s care, custody, and control pursuant to the access the Court granted in the October 1, 2019 TRO. Additionally, Defendants have made an offer to settle, and while the FTC indicated it would submit a counteroffer several weeks ago, Defendants still await that counteroffer. In short, there is no need for the parties to expend substantial resources on discovery unless and until the Court rules on the pending Motion.

DATED this 9th day of December, 2019.

Respectfully Submitted,

KIRTON McCONKIE

By: /s/ Benson L. Hathaway, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2019, I caused a true and correct copy of the foregoing **MOTION TO STAY DISCOVERY PENDING OUTCOME OF MOTION TO DISMISS** to be served on the following by email:

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CRISTOPHER A. CANNON; JAMES M.
CARLSON; and JEFFREY D. SPANGLER,

Defendant.

**ORDER STAYING DISCOVERY
PENDING OUTCOME OF MOTION TO
DISMISS**

Case No.: 2:19-cv-00713-DAK-CMR

Judge Dale Kimball

The Court, having reviewed Defendants' Motion to Stay Discovery Pending the Outcome on their Motion to Dismiss ("Motion to Stay"), and for good cause appearing in support, hereby GRANTS the Motion to Stay.

IT IS HEREBY ORDERED that all discovery is stayed until the Court issues its decision on the Motion to Dismiss.

DATED this 9th day of December, 2019.

BY THE COURT:

By: _____
Judge Dale Kimball
United States District Court Judge