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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FEDERAL TRADE COMMISSION and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

ZURIXX, LLC, *et al.*,

Defendants.

**PLAINTIFFS' MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY
DISCOVERY**

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

District Judge Dale A. Kimball
Magistrate Judge Evelyn J. Furse

Plaintiffs Federal Trade Commission ("FTC") and Utah Division of Consumer Protection
("Division") oppose Defendants' Motion to Stay Discovery Pending Outcome of Motion

Dismiss (“Motion to Stay”) (ECF 70). Defendants seek a blanket stay on all discovery including that of third parties. Defendants’ Motion to Stay should be denied and discovery should commence without delay because Defendants “have not met their burden to show a clear case of hardship or inequity.” *United States v. Stevens-Henager College, Inc.*, No. 2:15-CV-00119, 2017 WL 5241002, at *2 (D. Utah June 23, 2017) (Furse, M.J.) (unpublished). Defendants’ Partial Motion to Dismiss is without merit, and—even if Defendants prevail—discovery would not be substantially limited or eliminated. Moreover, a stay would prejudice Plaintiffs by imposing further delay, increasing costs and placing unnecessary constraint on agency resources, and impeding Plaintiffs’ ability to recover redress and other relief for consumers.

“[T]he 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) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). Nevertheless, “[d]elays of discovery hinder the ‘just, speedy, and inexpensive determination of every action and proceeding.’” *Stevens-Henager College, Inc.*, 2017 WL 5241002, at *2 (citing Fed. R. Civ. P. 1). “When determining whether or not to grant a stay, the Court ‘must weigh competing interests and maintain an even balance.’” *Id.* (quoting *Landis v. N. Am. Co.*, 299 U.S. at 254). Those seeking a stay “must show ‘a clear case of hardship or inequity’ if ‘even a fair possibility’ exists that the stay would damage another party.” *Id.* (citing *Creative Consumer Concepts, Inc. v. Kreidler*, 563 F.3d 1070, 1080 (10th Cir. 2009)).

First, Defendants have failed to make any showing of hardship or inequity, or even acknowledge that such a showing is required. It is not enough that Defendants would prefer to

delay any expenditure of time and money engaging in discovery—and to delay any ultimate resolution in which Defendants could be held accountable for their conduct.

Second, there is more than a “fair possibility” of harming the Plaintiffs and consumer victims. Staying discovery would further delay and impede Plaintiffs’ ability to recover redress and other relief for consumers. Many consumers have lost their life savings or taken out enormous sums in high interest loans or credit card debt due to Defendants’ conduct. Delay also increases the risk of loss of evidence and memory; prolongs and increases the cost of maintaining the receivership; and unnecessarily prolongs the burden on agency resources that can be used to tackle other ongoing fraudulent schemes.

Third, as demonstrated in Plaintiffs’ Oppositions (ECFs 72 and 76), Defendants’ Partial Motion to Dismiss improperly asks the Court to disregard the applicable law, and therefore has no merit.

Fourth, Defendants have failed to show how discovery would be limited or eliminated even if Defendants prevail on their Partial Motion to Dismiss. In fact, the case would continue with the allegations intact and discovery would be substantially the same. Defendants’ Partial Motion to Dismiss challenges the FTC’s power to recover equitable monetary relief and which consumers would be entitled to monetary relief. It does not challenge the FTC’s claims for other types of relief, any of the facts at issue, or the Division’s claims as to Utah consumers.

Finally, Defendants’ request for a blanket stay ignores Defendants’ agreement in both the Stipulated Preliminary Injunction and the Stipulated Motion for Initial Scheduling Conference that third party discovery could proceed. (*See* ECF 54 at Section XXV and ECF 67 at n.1). The

Court has already approved the Stipulated Preliminary Injunction that included the commencement of third party discovery.

Therefore, Plaintiffs respectfully request that the Court deny Defendants' Motion to Stay Discovery Pending Outcome of Motion Dismiss.¹

Date: December 23, 2019

Respectfully submitted,

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¹ Defendants also assert that a stay is warranted because (1) the parties have stipulated to a preliminary injunction, (2) Plaintiffs have access to all the documents in Zurixx's custody, and (3) Defendants have offered to settle. (Mot. to Stay at 2.) Defendants have provided no explanation or reasoning for why these factors would favor a stay of discovery, and the Court should reject them as meritless.

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2019, I electronically filed the foregoing **PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO STAY DISCOVERY** with the Clerk of Court using CM/ECF, which will send a notice of electronic filing to counsel of record.

/s/ Collot Guerard
Collot Guerard