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

FEDERAL TRADE COMMISSION and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

ZURIXX, LLC, a Utah limited liability
company; CARLSON DEVELOPMENT
GROUP, LLC, a Utah limited liability
company; CJ SEMINAR HOLDINGS, LLC,
a Utah limited liability company; ZURIXX
FINANCIAL, LLC, a Utah limited liability
company; CHRISTOPHER A. CANNON,
individually and as an officer of ZURIXX,
LLC; JAMES M. CARLSON, individually
and as an officer of ZURIXX, LLC; and
JEFFREY D. SPANGLER, individually and
as an officer of ZURIXX, LLC,

Defendants.

**ORDER (1) GRANTING IN PART
DEFENDANTS' MOTION TO STAY
DISCOVERY (ECF NO. 70), (2)
GRANTING IN PART STIPULATED
MOTION FOR INITIAL SCHEDULING
CONFERENCE (ECF NO. 67), AND (3)
DENYING AS MOOT MOTION FOR
CLARIFICATION OF MAGISTRATE
JUDGE'S ORAL RULING ON THIRD
PARTY DISCOVERY (ECF NO. 96)**

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

Judge Dale A. Kimball

Magistrate Judge Evelyn J. Furse

Before the Court is (1) Defendants' Motion to Stay Discovery (ECF No. 70), (2) the parties' Stipulated Motion for Initial Scheduling Conference (ECF No. 67), and (3) Plaintiffs' Motion For Clarification of Magistrate Judge's Oral Ruling on Third Party Discovery (ECF No. 96). For the reasons set forth below, the Court GRANTS IN PART Defendants' Motion to Stay, GRANTS IN PART the Stipulated Motion for Initial Scheduling Conference, and DENIES AS MOOT Plaintiffs' Motion for Clarification of Magistrate Judge's Oral Ruling on Third Party Discovery.

1. Motion to Stay Discovery (ECF NO. 70)

In their Motion to Stay Discovery, the Defendants asked the Court to stay discovery pending resolution of their Partial Motion to Dismiss (ECF No. 62). However, in the reply and at the January 9, 2020 hearing, Defendants argued that the case should be stayed pending the Supreme Court's decision in SEC v. Liu, 754 F. App'x 505 (9th Cir. 2018), cert. granted, 205 L. Ed. 2d 265 (U.S. Nov. 1, 2019) (No. 18-1501). Defendants also argue that a stay of discovery is appropriate if certiorari is granted in three cases involving the Federal Trade Commission ("FTC"): AMG Capital Management, LLC v. FTC, No. 19-508 (U.S. Dec. 13, 2019), FTC v. Credit Bureau Center, LLC, No. 19-825 (U.S. Dec. 19, 2019), and Publishers Business Services, Inc. v. FTC, No. 19-507 (U.S. Oct. 18, 2019). Given the switch in focus, the Court ordered additional briefing on Defendants' new arguments (ECF No. 95), which now is complete. Having reviewed the additional briefing (ECF Nos. 97 & 107), the Court GRANTS IN PART Defendants' Motion to Stay Discovery (ECF No. 70). As set forth below, the Court STAYS discovery, with the exception of written third party discovery, pending the Supreme Court's decision in Liu.

The Supreme Court's decision in Liu will address the Securities and Exchange Commission's ability to obtain equitable monetary relief under a statute similar to Section 13(b) of the FTC Act, which is at issue in this case. Significantly, in the AMG case, which addresses whether the FTC is entitled to equitable monetary relief under Section 13(b), the Solicitor General argued for a stay of that petition given the overlap between that case and Liu. The Court finds that the Supreme Court's decision in Liu case could significantly impact how the parties proceed with discovery in this case and

how the parties value the case, and Defendants would suffer harm if forced to engage in discovery and litigation that may not be necessary in light of the Liu decision.

Further, the Plaintiffs will suffer little or no harm if this case is stayed pending a decision in Liu. The Supreme Court will decide Liu by June 29, 2020, so the length of the stay will be less than five months. Moreover, the District Judge has entered a Stipulated Preliminary Injunction in this case and appointed a Receiver (ECF No. 54). Plaintiffs also already obtained, or have access to, all documents and data in Zurixx's care, custody or control pursuant to the District Judge's October 1, 2019 Ex Parte Temporary Restraining Order (ECF No. 24). Thus, Plaintiffs have already obtained much of the discovery and relief they are seeking in this case. However, to mitigate any potential harm to the Plaintiffs, the Court will allow written third party discovery to proceed. Written third party discovery will not impose a burden on the Defendants, and it will allow the Plaintiffs to preserve evidence from third parties. The Court will not allow third party depositions to proceed at this time given that this would impose costs on the Defendants.

The Court declines to stay the case beyond the Supreme Court's issuance of a decision in Liu. Staying the case because the Supreme Court may grant certiorari in other cases involving the FTC is too speculative at this time. Accordingly, the Court GRANTS IN PART the Motion to Stay and stays discovery in this case, with the exception of written third party discovery, pending the Supreme Court's decision in Liu.

2. Stipulated Motion for Initial Scheduling Conference (ECF No. 67)

The Court granted the Motion for Initial Scheduling Conference (ECF No. 67) in that the parties had an opportunity to set forth their positions on the schedule in this

case at the January 9 hearing since this Motion was noticed for hearing at that time (ECF No. 77). However, given that the Court is staying most discovery in this case as set forth above, the Court declines to issue a Scheduling Order at this time. Instead, the Court ORDERS the parties to submit a Proposed Stipulated Scheduling Order to the Court within fourteen (14) days after the Supreme Court issues a decision in Liu or the District Judge issues a decision on the Partial Motion to Dismiss (ECF No. 67), whichever occurs later. If the parties cannot agree on a Proposed Stipulated Scheduling Order, they should submit competing versions of the Proposed Scheduling Order to the Court.

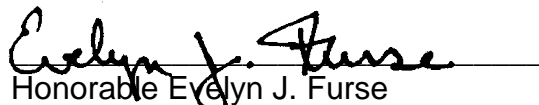
3. Motion For Clarification of Magistrate Judge's Oral Ruling on Third Party Discovery (ECF No. 96)

Plaintiffs' Motion seeks clarification from the Court regarding the oral ruling made at the January 9 hearing concerning the scope of third party discovery permitted pending a ruling on the Motion to Stay Discovery. Given that the Court has now issued a decision on the Motion to Stay Discovery, the relief sought in this Motion is moot, so the Court DENIES AS MOOT the Motion (ECF No. 96). However, the Court reiterates, as set forth above, that in connection with its ruling on the Motion to Stay Discovery, the parties may proceed with written third party discovery at this time, but third party depositions are stayed along with all other discovery.

SO ORDERED.

DATED this 12th day of February, 2020.

BY THE COURT:


Honorable Evelyn J. Furse
United States Magistrate Judge