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

FEDERAL TRADE COMMISSION, and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

vs.

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,

CRISTOPHER A. CANNON, individually
and as an officer of ZURIXX, LLC,

JAMES M. CARLSON, individually and as
an officer of ZURIXX, LLC, and

**RULE 72(a) OBJECTIONS TO
MAGISTRATE JUDGE'S ORDER OF
FEBRUARY 12, 2020**

Case Number: 2:19-cv-00713-DAK

Judge Dale Kimball

Magistrate Judge Evelyn Furse

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| JEFFREY D. SPANGLER, individually and as an officer of ZURIXX, LLC | |
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| Defendants. | |
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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 72(a), the Utah Division of Consumer Protection (“Division”), hereby objects to the February 12, 2020 Order [Doc. 108], Granting in Part Defendants’ Motion to Stay Discovery [Doc. 70]; Granting in Part the Stipulated Motion for Initial Scheduling Conference [Doc. 67] and Denying as Moot Motion for Clarification of Magistrate Judge’s Oral Ruling on Third Party Discovery [Doc. 96] (the “Stay Order”). In granting the partial Motion to Stay, Magistrate Judge Furse stayed discovery, with the exception of written third party discovery, pending the decision of the United States Supreme Court in *SEC v. Liu*, No. 18-1501, 2019 WL 5659111 (Nov. 1, 2019). In staying discovery, Judge Furse considered only the effect the decision in *Liu* might have on the claims by the Federal Trade Commission (“FTC”). Judge Furse reasoned that the Supreme Court’s decision in *Liu* will address the ability of the SEC to obtain equitable monetary relief under a statute similar to Section 13(b) of the FTC Act. But she did not address the claims brought by the Division.

The Division seeks to enforce Utah’s consumer protection statutes. Unlike the Securities and Exchange Act and Section 13(b) of the FTC Act, the Utah Consumer Sales Practices Act (“CSPA”) does not rely on injunctive relief to provide restitution. Instead, it specifically provides that the Division may recover actual damages on behalf of consumers. Utah Code §13-11-17(1)(c). The Division’s authority to obtain actual damages will not be affected by the decision

in *Liu* or by any of the other cases the Supreme Court may take that interpret Section 13(b) of the FTC Act. Accordingly, there is no basis to stay discovery by the Division and the Stay Order is therefore contrary to law.

The Division, filing jointly with the FTC, sued Zurixx, LLC, Carlson Development Group, LLC, CJ Seminar Holdings, LLC, Zurixx Financial, LLC, Christopher A. Cannon, James M. Carlson and Jeffrey D. Spangler (collectively, “Zurixx”) based on the authority granted by Utah Code §§13-2-5(3), 13-11-17, 13-15-6, and 15 U.S.C. §45b. The Complaint alleges, inter alia, that Zurixx violated the CSPA and the Utah Business Opportunity Disclosure Act (“BODA”).

On December 9, 2019, Zurixx filed a Motion to Stay Discovery [Doc 70]. On December 23, 2019, the FTC and the Division filed their Memorandum of Law in Opposition to Defendants’ Motion to Stay Discovery [Doc 84]. On January 6, 2020, Defendants filed a Reply on the Motion to Stay Discovery [Doc 90] and then a Supplemental Response on January 23, 2020. On February 12, 2020, Judge Furse entered the Stay Order.

The Discovery Stay says a case pending before the Supreme Court, *Liu*, will address whether the Securities and Exchange Commission can obtain equitable monetary relief under a statute similar to Section 13(b) of the FTC Act. The FTC brought a 13(b) claim in this case. The Stay Order does not mention the CSPA or BODA, neither of which are impacted by *Liu* or any other case mentioned by Zurixx as cases that might justify a stay. The Division respectfully requests that the Court set aside the Stay Order, open discovery, and order the parties to file an updated proposed scheduling order within fourteen days of the Court’s order setting aside the Stay Order.

ARGUMENT

The party seeking a stay “must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.” *Southwest Clubs, Inc. v. Capitol Specialty Insurance*, 2015 WL 11117308, *2 (D. N.M. 3/31/2015), citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Similarly, the proponent of a stay bears the burden of establishing its need. *Clinton v. Jones*, 520 U.S. 681, 808 (1997).

Section 13-11-17(1) of the CSPA authorizes the Division to bring an action in a court of competent jurisdiction to: (a) obtain a declaratory judgment that an act or practice violates this chapter; (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter; (c) recover, for each violation, actual damages on behalf of consumers who complained to the Division within a reasonable time after it instituted proceedings; and (d) obtain a fine in an amount determined after considering statutory factors. Because the CSPA gives the Division specific statutory authority to obtain actual damages on behalf of consumers, the Supreme Court’s decision in *Liu* will not affect the prosecution of the Division’s claims nor its right to conduct discovery.

The Division objects to Judge Furse’s finding that the Supreme Court’s decision in *Liu* could significantly impact how the parties proceed with discovery. Stay Order, p. 2. Whether *Liu* impacts how the FTC and Zurixx proceed with discovery, it will have no impact on the scope of discovery to which the Division is entitled.

Judge Furse also found that Zurixx “would suffer harm if forced to engage in discovery and litigation that may not be necessary in light of the *Liu* decision.” Order, p. 3. The Division

objects to this finding, because Judge Furse focused on the structure of the FTC Act and ignored the CSPA. Whatever the Supreme Court decides in *Liu*, the Division will be entitled to discovery and litigation related to liability and damages. That discovery will overlap completely with the discovery the FTC would seek: the discovery necessary to calculate damages under the CSPA would be the same as the discovery necessary to calculate restitution under the FTC Act. Zurixx will suffer no harm if that discovery goes forward now, since the decision in *Liu* will not affect either the breadth of the discovery to be conducted or the conduct of a trial.

The Division also objects to Judge Furse's finding that Plaintiffs will suffer little or no harm because the stay will be less than five months. Order, p. 3. But even a short stay causes harm to the Division. It precludes the Division from taking depositions of Zurixx employees, vendors, and consumers while their memories of their transactions with Zurixx are still fresh. While the documents in the Receiver's possession are important, the testimony of these individuals is equally important.

A stay would not promote judicial economy. No matter how *Liu* is decided, the same discovery will be necessary.

CONCLUSION

Zurixx has not met its burden of establishing that it needs a stay of discovery against the Division. The Division respectfully requests that the Court set aside the Stay Order, open discovery, and order the parties to file an updated proposed scheduling order within fourteen days of the Court's order setting aside the Stay Order.

Respectfully submitted this 26th day of February 2020.

/s/ Robert G. Wing
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of February, 2020, a true and correct copy of the foregoing **RULE 72(a) OBJECTIONS TO MAGISTRATE JUDGE'S ORDER OF FEBRUARY 12, 2020** was served electronically via the Court's ECF System upon:

For the FTC:

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Collot Guerard
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Miry Kim

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/s/ Paula Faerber _____
Paula Faerber