



1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
FAX 215.864.8999
www.ballardspahr.com

Marcel Pratt
Tel: 215.864.8506
Fax: 215.864.8999
prattm@ballardspahr.com

February 25, 2022

Via CM/ECF

The Hon. John M. Gallagher
United States District Court for
the Eastern District of Pennsylvania
Edward N. Cahn Courthouse & Federal
Building
504 W. Hamilton Street
Allentown, PA 18101

Re: Marshall, et al. v. Prestamos CDFI, LLC, No. 5:21-cv-04337-JMG (E.D. Pa.)

Dear Judge Gallagher:

We write on behalf of Defendant Prestamos CDFI, LLC (“Prestamos”) in response to the letter Plaintiffs filed with the Court on February 14, 2022 (Doc. 22) (the “Letter”), without notice to Prestamos, regarding a purported discovery dispute in the above-referenced case. Prestamos’s position with respect to Plaintiffs’ sprawling and irrelevant discovery requests is sound: the extraordinary circumstances of this putative nationwide class action warrant a stay, or at least a substantial narrowing, of discovery pending resolution of Prestamos’s Motion to Dismiss Plaintiffs’ Amended Complaint (Doc. 24) (the “Motion”). Not only does the Motion challenge the viability of Plaintiffs’ claims—which ask the Court to sidestep a complex regulatory scheme that, by Congressional design, is to be overseen by the United States Small Business Administration—it also disputes this Court’s subject matter jurisdiction to hear the action. Granting the Motion would obviate the need for expansive (and expensive) discovery involving, by Plaintiffs’ own account, “thousands of proposed class members,” dozens of depositions, and “perhaps *millions* of pages of documents.” Joint Rule 26(f) Report (Doc. 17) at 9, 13 (emphasis added).

Background

A Rule 16 conference has not yet been scheduled. Plaintiffs served their first sets of interrogatories and requests for production on Prestamos on November 16, 2021. (Under Rule 26(d), the requests would remain premature until the parties held their Rule 26(f) conference on December 13, 2021.) The parties agreed to and did serve initial disclosures

The Hon. John M. Gallagher
February 25, 2022
Page 2

under Rule 26(a)(1) on January 14, 2022, and Prestamos responded to the interrogatories and requests for production on January 19, 2022, largely with objections to the substance of the discovery requests, which were voluminous, overbroad, and sought information about Prestamos's business that is irrelevant to Plaintiffs' contract-based claims.

As Plaintiffs acknowledge, the parties met and conferred at length about Prestamos's discovery responses on January 25, 2022. During that call, Prestamos asked Plaintiffs whether they would agree to a stay. Further, Prestamos offered a compromise: in response to identified requests, Prestamos would produce non-privileged information in its possession relating specifically to the Named Plaintiffs, who remain (until a class is certified by this Court) the only parties in this dispute. Plaintiffs agreed to consider the proposal. But Plaintiffs did not respond to Prestamos's stay proposal or otherwise engage in further dialogue about reducing the burdens of discovery. Instead, Plaintiffs rushed the matter to the Court, while at the same time seeking to circumvent Prestamos's well-founded objections altogether by serving an onerous subpoena on Chicanos Por La Causa, Inc., Prestamos's corporate parent, seeking much of the same information that they seek from Prestamos.

Argument

While Prestamos had hoped to resolve the issue among the parties or, failing that, to raise it at the Rule 16 conference as provided in the Court's Policies and Procedures, a stay or substantial narrowing of discovery is appropriate pending resolution of Prestamos's case-dispositive motion to dismiss. The Motion presents extraordinary circumstances justifying a stay, as it challenges the Court's subject matter jurisdiction as a threshold matter and would preempt unnecessary and unusually wide-ranging discovery.

As an initial matter, the Letter is premature. Prestamos has proposed, in lieu of a complete stay, providing Plaintiffs with documents that respond to their requests and relate specifically to the Named Plaintiffs. Plaintiffs contend that this is "unworkable" and "presum[e]" that this discovery would exclude certain broad categories of information. *See* Letter at 2–3. These are exactly the issues that could have been resolved—or at least clarified—by further conversations between the parties. Raising the dispute to the Court is unhelpful and inappropriate at this juncture, and Prestamos submits that no conference is necessary.

Should the Court decide to adjudicate the dispute, it should find that the extraordinary scope of Plaintiffs' proposed discovery, together with the serious jurisdictional and policy issues that Prestamos raises in the Motion, warrant a stay at this early stage of the litigation.

Whether to stay discovery while considering a motion to dismiss is within the Court's sound discretion. *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 264 F.3d 344, 365 (3d Cir.

The Hon. John M. Gallagher
 February 25, 2022
 Page 3

2001). “[A] stay is proper where the likelihood that such motion may result in a narrowing or outright elimination of discovery outweighs the likely harm to be produced by the delay.” *19th St. Baptist Church v. St. Peters Episcopal Church*, 190 F.R.D. 345, 349 (E.D. Pa. 2000) (internal quotation marks omitted). “Where a pending motion to dismiss may dispose of the entire action and where discovery is not needed to rule on such motion, the balance generally favors granting a motion to stay.” *Weisman v. Mediq, Inc.*, No. 95-cv-1831, 1995 WL 273678, at *2 (E.D. Pa. May 3, 1995). The Court “need not form an opinion as to the merits of the motion,” but instead must simply “consider the scope of the motion and ask whether it may potentially lead to the end of the case, and whether it will provide the parties with full knowledge as to which claims are viable and, correspondingly, as to what discovery need occur.” *Perelman v. Perelman*, No. 10-cv-5622, 2011 WL 3330376, at *1 (E.D. Pa. Aug. 3, 2011) (internal quotation marks omitted).

Extraordinary circumstances warrant a stay. Chief among them is that the Court lacks subject matter jurisdiction even to entertain the action because, as the Motion explains, Plaintiffs lack Article III standing to bring suit. *See Wyers Prod. Grp. v. Cequent Performance Prod., Inc.*, No. 12-cv-02640, 2013 WL 2466917, at *2 (D. Colo. June 7, 2013) (“Courts have routinely recognized that discovery may be inappropriate where the court’s jurisdiction is at issue. . . . [S]tays are generally *avored* when a jurisdictional defense under Rule 12(b)(1) is asserted.”). And the burden on Prestamos is exceptional: as Plaintiffs acknowledge, they seek discovery as to records involving potentially thousands of putative class members, dozens of depositions, and documents whose production could easily number in the **millions** of pages.¹ Joint Rule 26(f) Report (Doc. 17) at 9, 13. It would be patently unfair for the Court to require Prestamos to engage in such an extraordinarily expensive discovery effort only to later conclude that it never had jurisdiction in the first place.

By comparison, Plaintiffs’ burden in waiting for the Motion to be resolved before proceeding with discovery is minimal. Plaintiffs have not sought a preliminary injunction, and there is no time-sensitive evidence to which Plaintiffs require immediate access. *Cf. 19th Street Baptist Church*, 190 F.R.D. at 346 (allowing immediate discovery where plaintiff-witnesses were “aged and infirm” and might not be available to testify at trial). Plaintiffs

¹ Even were a stay not granted, Prestamos has legitimate substantive objections to many of Plaintiffs’ discovery requests. By Plaintiffs’ own allegations, this case is about whether Prestamos is liable to Plaintiffs for the alleged breach of their loan promissory notes. Documents relating to the Plaintiffs specifically should be the bulk of what Plaintiffs need to litigate their claims. In any event, discovery into “Prestamos’s PPP loan policies,” the “whereabouts” of “PPP federal loan dollars,” and the fees Prestamos received from SBA for participating in the PPP are entirely irrelevant to the allegations and claims in the Amended Complaint.

The Hon. John M. Gallagher
February 25, 2022
Page 4

have repeatedly acknowledged that they would generally expect discovery to take much longer in a case of this complexity. *See* Joint Rule 26(f) Report (Doc. 17) at 17 (noting that “[t]he parties are proposing what is a relatively condensed schedule for a case of this complexity”); Letter at 2 (acknowledging that the proposed discovery period “is still short of what is standard in cases of this complexity”). And the delay itself would be relatively minimal, as the Motion is due to be fully briefed as early as March 10, upon the filing of Plaintiffs’ response.

A stay here would “avoid wasting significant time and resources on what may be needless discovery.” *United States ex rel. Brown v. Pfizer, Inc.*, No. 05-cv-6795, 2017 WL 2691927, at *4 (E.D. Pa. June 22, 2017). At minimum, waiting for the Motion to be resolved would help focus subsequent discovery on those claims that are viable, if any. *See Weisman*, 1995 WL 273678, at *2 (“By imposing a stay while ruling on the motion, when discovery proceeds the parties will have full knowledge as to which claims are viable and, correspondingly, as to what discovery need occur.”); *McLafferty v. Deutsche Lufthansa A.G.*, No. 08-cv-1706, 2008 WL 4612856, at *2 (E.D. Pa. Oct. 15, 2008) (“[D]elaying discovery until the Court can determine whether or not Plaintiffs have pled the facts necessary to proceed with the claim, may help to streamline the expensive discovery process, and, thereby, minimize the burden on counsel, parties and the Court.”). “In short, the stay will potentially save time and money for all concerned.” *Weisman*, 1995 WL 273678, at *2.

For the foregoing reasons, the Court should grant the stay. At minimum, the Court should limit discovery during the pendency of the Motion to matters relating to the Named Plaintiffs, saving discovery as to the potentially thousands of putative class members at least until determining which, if any, claims may proceed past the pleadings stage.

Respectfully submitted,

/s/ Marcel Pratt

Marcel Pratt

MP