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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAMES COTTLE, et al.,

Plaintiffs,

v.

PLAID INC.,

Defendant.

CASE NO. 4:20-cv-03056-DMR

**DEFENDANT PLAID INC.'S RESPONSE TO
COTTLE PLAINTIFFS' ADMINISTRATIVE
MOTION TO CONTINUE CASE
MANAGEMENT CONFERENCE**

Hon. Donna M. Ryu

Action Filed: May 4, 2020

Trial Date: None Set

I. INTRODUCTION

Defendant Plaid Inc. (“Plaid”) agrees with Plaintiffs that moving the August 5, 2020 CMC to a later date will promote judicial efficiency. But Plaid disagrees with the timing set out in Plaintiffs’ Motion, which they unilaterally filed in the midst of the Parties’ meet and confer efforts. Plaid respectfully submits that the CMC should be set—not 21 days from the filing of Plaintiffs’ forthcoming Consolidated Amended Complaint, as Plaintiffs propose—but rather after the Court’s resolution of Plaid’s anticipated Motion to Dismiss. Plaid’s Motion may resolve the entire litigation (as Plaid submits it should) or resolve dispositive issues, which would significantly narrow the contours of discovery and thus create efficiencies for the Court and save substantial time and money for the Parties. Courts in this Circuit routinely continue CMCs and stay discovery pending resolution of motions to dismiss.

Plaintiffs’ Motion incorrectly suggests that Plaid’s proposal to continue the CMC until after the Motion to Dismiss would “effectively bypass” FRCP Rules 1, 16 and 26; in fact, it would further the purposes of those Rules. Those Rules focus on a “just, speedy, and inexpensive determination” of matters, which are also Plaid’s reasons for requesting the CMC be set after the Motion to Dismiss ruling. *See, e.g.*, FRCP Rule 1. Plaid made this judicial and party efficiency point during the meet and confer process, *see* Decl. of Ethan Dettmer (“Dettmer Decl.”) ¶ 9, but rather than responding, Plaintiffs filed their Motion, interrupting otherwise collaborative efforts to resolve this scheduling issue and avoid wasting the Court’s time and resources with a disputed matter.

Pursuant to Civil Local Rule 6-3, Plaid requests that the Court vacate the CMC currently set for August 5, 2020, and reschedule it for a date after the resolution of Plaid’s forthcoming Motion to Dismiss.¹ This is well within the Court’s discretion, is well-supported by precedent, and is the most efficient outcome for the Parties and the Court.

¹ Plaintiffs state that “Plaid did not file a response” to the *Cottle* Complaint, “apparently in light of the pending Stipulation.” ECF No. 54 at 1-2. But the Parties’ agreement that Plaintiffs would file a Consolidated Amended Complaint (ECF No. 51) would make such a filing inefficient and superfluous. And the Joint Stipulation sets forth a specific briefing schedule for Plaid’s anticipated Motion to Dismiss, which all Parties agreed to. Plaid intends to file its Motion accordingly, or as modified by the Court.

II. BACKGROUND

Seeking an efficient litigation process, Plaid’s counsel has cooperatively worked with counsel for all the Plaintiffs in the various related actions to consolidate all Complaints into a single Consolidated Amended Complaint, to which Plaid will then respond (with an anticipated Motion to Dismiss). *See* Dettmer Decl. at ¶¶ 3-6. In a Joint Stipulation filed with the Court, the Parties agreed that, given the similarities among all the cases, it would be more efficient to proceed with a consolidated complaint and one Motion to Dismiss, rather than four different complaints, motions, and schedules. *See* ECF No. 51. On the same day the Joint Stipulation was filed, another related lawsuit commenced, which has sought to be joined with this case. *See Evans et al. v. Plaid Inc.*, 3:20-cv-04804-JSC (N.D. Cal. July 24, 2020), ECF No. 16.

In light of upcoming deadlines (including the CMC), the Parties continued productively discussing the possible effect on the pending Joint Stipulation from the uncertainty caused by the filing of the *Evans* Plaintiffs’ lawsuit. Dettmer Decl. at ¶¶ 8-9. On July 24, Plaintiffs’ counsel requested that the Parties file a joint stipulation requesting the Court grant the Joint Stipulation and set a new CMC, suggesting a date 30 days after the Joint Stipulation was entered. Dettmer Decl. Ex. A. Plaid responded that it “**agree[d]** to a further filing - a further stipulation regarding consolidation and scheduling,” but Plaid stated “that **efficiency** will be much better served for the parties and the Court if the CMC is pushed back to after the ruling on the motion to dismiss,” and that the stipulation would “need to make that clear.” *Id.* (emphasis added). Plaid’s counsel offered to discuss the matter with Plaintiffs’ counsel (*id.*), but instead of engaging further with Plaid, Plaintiffs filed their Motion.

III. ARGUMENT

A. The CMC Should Be Continued Until After The Ruling On Plaid’s Motion To Dismiss To Promote Judicial Economy And Efficiency

A case schedule that is reasonable for all parties and the Court is necessary for “the just, speedy, and inexpensive determination” of this action. Fed. R. Civ. P. 1. Plaid agrees with Plaintiffs that “[i]t would be inefficient for the Court to hold a CMC while there is uncertainty as to whether additional plaintiffs will be consolidated in this action” and that the CMC should be continued. ECF No. 54 at 2. The sole substantive dispute between the Parties relates to the appropriate timing of the rescheduled CMC. Plaid does not propose “to delay indefinitely the Initial CMC,” as Plaintiffs

claim. *Id.* at 3. Rather, Plaid proposes only to continue the CMC until after the resolution of its anticipated Motion to Dismiss, which will be filed and briefed in accordance with the jointly agreed-upon schedule set forth in the Parties' Stipulation (or as modified by the Court).

Plaid expects to file a Motion to Dismiss that challenges Plaintiffs' supposed harm and Article III standing, and that demonstrates Plaintiffs' claims do not meet the pleading requirements. Efficient and orderly proceeding of this action would thus be furthered by defining the scope of the claims and defenses in this case through the Court's ruling on the Motion to Dismiss before engaging in substantial work toward discovery. Plaid expects it will address many dispositive issues in its Motion to Dismiss, which could dramatically alter the scope of the case, if any part of it proceeds. Thus, it would significantly change the contours of what is appropriate, relevant discovery. Efficiency would be maximized by deferring the Parties' initial CMC and related discussions until the scope of claims and defenses is determined after the Court rules on Plaid's Motion to Dismiss.

Continuing the CMC in the manner Plaid suggests is most efficient because, with respect to Rule 26 discovery obligations triggered by the CMC date, it will allow the Parties to tailor the scope of discovery to any remaining claims and allegations and—contrary to Plaintiffs' statement that it would “preclude input from the Court on the scope of and timing discovery”—will permit the Court to issue a Case Management Order tailored to the case if and as it remains. ECF No. 54.

Plaintiffs' proposal, on the other hand, would require the Court to enter a Case Management Order before knowing the scope of any remaining case post-Motion to Dismiss. Plaintiffs' proposal similarly would require the Parties to engage in potentially extensive Rule 26 discovery prior to a ruling on Plaid's Motion to Dismiss, with the end result being—depending on the outcome of that ruling—that the Parties are forced to expend time, effort and money on wholly irrelevant discovery.

B. Courts Routinely Exercise Discretion To Continue CMCs, And Find “Good Cause” To Stay Discovery, Until After The Resolution Of Motions To Dismiss

Courts in this Circuit “routinely” exercise their inherent power to control their dockets to continue CMCs pending resolution of motions to dismiss. *Ou-Young v. Rea*, 2014 WL 129267, at *2 (N.D. Cal. Jan. 14, 2014) (Magistrate Judge Grewal). *See e.g.*:

- *Scandlon v. Blue Coat Sys., Inc.*, 2013 WL 308879, at *5 (N.D. Cal. Jan. 25, 2013) (Judge Seeborg granting motion to dismiss with leave to amend and noting CMC would be “subject to a continuance” if another motion to dismiss were filed challenging the amended complaint);

- 1 • *Antman v. Uber Techs., Inc.*, No. 3:15-CV-01175-LB, (N.D. Cal. June 19, 2015), ECF Nos. 26 and 41 (Judge Beeler twice continuing CMC “given the pending Motion to Dismiss”);
- 2 • *Bivolarevic v. U.S. CIA*, No. C 09-4620 SBA, 2010 WL 147903, at *1 (N.D. Cal. Jan. 12, 2010) (Judge Armstrong denying as moot defendant’s motion to continue CMC because “the Court previously continued the Case Management Conference [by nearly two months] to follow the hearing on the motion to dismiss”);
- 3 • *Thomas v. Kimpton Hotel & Rest. Grp., LLC*, No. 19-CV-01860-MMC, (N.D. Cal. July 3, 2019), ECF No. 27 (Judge Chesney continuing initial case management conference “[i]n light of the pending motion to dismiss”);
- 4 • *Micron Tech., Inc. v. United Microelectronics Corp.*, No. 17-CV-06932-MMC (N.D. Cal. May 2, 2019), ECF No. 39 (Judge Chesney continuing case management conference “to give [the court] time to resolve the pending motion to dismiss, which may narrow the scope of this case.”).

5 Because Rule 26 discovery is impacted by the date of the initial CMC, Plaid notes that good
 6 cause exists to stay discovery where, “absent discovery,” a pending motion may resolve “potentially
 7 dispositive” issues. *Carter v. Oath Holdings*, 2018 WL 3067985, at *4 (N.D. Cal. June 21, 2018);
 8 *Gibbs v. Carson*, 2014 WL 172187, at *3 (N.D. Cal. Jan. 15, 2014); *cf. Bell Atl. Corp. v. Twombly*,
 9 550 U.S. 544, 558 (2007) (where “complaint ... could not raise a claim of entitlement to relief, ‘this
 10 basic deficiency should ... be exposed at the point of minimum expenditure of time and money’”
 11 (citation omitted)). Indeed, courts stay discovery where there is a “clear possibility” that a dispositive
 12 motion will be granted. *See, e.g., GTE Wireless v. Qualcomm*, 192 F.R.D. 284, 287 (S.D. Cal. 2000).

13 Notably, a stay is particularly appropriate where the “[d]efendant challenges Plaintiffs’
 14 Article III standing,” as Plaid anticipates doing here. *See Camacho v. United States*, 2014 WL
 15 12026059, at *3 (S.D. Cal. Aug. 15, 2014); *Al Otro Lado, Inc. v. Nielsen*, 2018 WL 679483, at *3
 16 (S.D. Cal. Jan. 31, 2018). Requiring the Parties to engage in discovery of issues that may be mooted
 17 if Plaid succeeds on its Motion to Dismiss, and forcing the Parties to engage in the inevitable
 18 negotiation around the 26(f) report, would be highly inefficient for both the Parties and the Court.

19 **C. Plaintiffs Will Not Be Prejudiced By Continuing CMC To After The Ruling On Plaid’s**
 20 **Motion To Dismiss, Whereas Plaid Will Be Prejudiced By Plaintiffs’ Proposed Schedule**

21 Plaintiffs’ assertion that they will be significantly prejudiced by the more efficient timetable
 22 Plaid is proposing is based on a misrepresentation of Plaid’s position. Plaid never proposed to “delay
 23 indefinitely the Initial CMC.” ECF No. 54 at 3. Plaid merely requested that the CMC be deferred
 24 until after the Court ruled on its Motion to Dismiss in order to streamline the discovery process to

properly reflect the remaining claims—if any—that survive Plaid’s Motion to Dismiss. *See* Fed. R. Civ. P. 1 (Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”) & 26 (permitting discovery of “any nonprivileged matter that is **relevant** to any party’s **claim** or defense and proportional to the needs of the case ...”) (emphasis added). As a practical matter, Plaid’s proposal is highly unlikely to result in a delay of “months or potentially years” as Plaintiffs assert. ECF No. 54 at 3. The Parties have already agreed to a briefing schedule for the Motion to Dismiss, as set forth in their Stipulation, and discovery could commence shortly after a ruling on the Motion to Dismiss, depending on what, if any, parts of the case remain.

Plaintiffs’ scattershot arguments of purported prejudice—including that memories will “fade” and evidence will be “lost” (*id.* at 3)—if the CMC were to be continued as Plaid proposes are unfounded. For example, the Parties have stipulated that they are already preserving information in accordance with their obligations (ECF No. 51 at ¶ 10), and a pause of several months is not at all likely to lead to significant “fading” of witnesses’ memories. As courts have made clear, “[t]here is minimal concern on evidence preservation as the parties have represented that they have taken steps to preserve relevant information.” *Yiren Huang v. Futurewei Techs., Inc.*, No. 18-CV-00534-BLF, 2018 WL 1993503, at *4 (N.D. Cal. Apr. 27, 2018); *see also Pokorny v. Quixtar Inc.*, No. 07-00201 SC, 2008 WL 1787111, at *2 (N.D. Cal. Apr. 17, 2008) (granting discovery stay because “Defendants previously agreed to preserve all evidence.”).

Plaintiffs’ prejudice assertions are baseless. On the other hand, as set forth above, Plaintiffs’ proposed schedule will result in prejudice to Plaid by forcing it to spend time and money on potentially irrelevant discovery.

IV. CONCLUSION

Plaid respectfully requests the Court vacate the CMC currently scheduled for August 5, 2020, and reschedule it for a date after the resolution of Plaid’s forthcoming response or motion to dismiss.

1 Dated: July 28, 2020

Respectfully submitted,

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