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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE PLAID INC. PRIVACY LITIGATION

Master Docket No. 4:20-cv-03056-DMR

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**DEFENDANT PLAID INC.'S
ADMINISTRATIVE MOTION TO
CONTINUE CASE MANAGEMENT
CONFERENCE**
Hon. Donna M. Ryu

Action Filed: May 4, 2020

Trial Date: None Set

I. INTRODUCTION

In its Order setting the initial Case Management Conference (“CMC”) for October 7, 2020, the Court noted that it “may further continue this date as appropriate based on Defendant’s response to the Consolidated Amended Complaint.” ECF No. 58 at 1. Defendant Plaid Inc. (“Plaid”) has now filed its response, a Motion to Dismiss Plaintiffs’ Consolidated Amended Complaint (“CAC”), and accordingly respectfully requests that the Court continue the October 7, 2020 initial CMC and the related deadlines, including the Rule 26(f) report and initial disclosures, until after the Court’s resolution of Plaid’s Motion to Dismiss.

A key issue for discussion at the initial CMC will be the timing and scope of discovery in this matter. The Court’s ruling on Plaid’s Motion to Dismiss may resolve the entire litigation (as Plaid submits it should) or many dispositive issues – the latter of which would significantly narrow the contours of discovery and streamline the management of this case. Given that the remaining scope of this case (if any) will not be clear until after the resolution of Plaid’s Motion to Dismiss, the Court and Parties should not be required to expend significant time, effort and money to engage in case management and discovery based on guesswork as to what the case will look like in the future. Plaid’s requested continuance would create significant efficiencies for the Court, and save substantial time and expense for the Parties. Courts in this Circuit routinely continue CMCs and stay discovery pending resolution of motions to dismiss. This is within the Court’s discretion, is well supported by precedent, and is the most efficient use of time and resources for the Parties and the Court.

II. PROCEDURAL BACKGROUND

Plaid’s counsel has worked cooperatively with Plaintiffs’ counsel to streamline this litigation for greater efficiency for the Parties and the Court, including efforts to consolidate five complaints into a single CAC. *See* Dettmer Decl. ¶¶ 3-6; ECF No. 55-1.

In their earlier motion to continue the CMC, Plaintiffs recognized that “[i]t would be inefficient for the Court to hold a CMC while there is uncertainty” and that the CMC should be continued. ECF No. 54 at 2. Plaid agreed, but explained that the most efficient path forward would be to hold the CMC after the resolution of Plaid’s Motion to Dismiss contrary to Plaintiffs’ request that the CMC be continued to 21 days after they filed their Consolidated Amended Complaint (which

would have been August 26, 2020). ECF No. 55. The Court instead issued its Order granting Plaintiffs' motion in part, and continuing the CMC until October 7, 2020. ECF No. 58. The Court's CMC Order and Order Consolidating Actions and Pretrial Order No. 1 as Modified (ECF. No. 57) set the following relevant deadlines:

- September 14, 2020: Plaid's Response to Complaint (Motion to Dismiss) Due
- September 30, 2020: Case Management Statement Due
- October 7, 2020: Initial Case Management Conference
- November 13, 2020: Plaintiffs' Opposition to Motion to Dismiss Due
- December 4, 2020: Plaid's Reply Brief in Support of Motion to Dismiss Due¹

As noted above, the Court explained in its Order that it "may further continue this [CMC] date as appropriate based on Defendant's response to the Consolidated Amended Complaint." ECF No. 58 at 1. On September 14, 2020, Plaid filed a Motion to Dismiss in response to the CAC. ECF No. 78.

III. PLAID'S MOTION TO DISMISS

Plaid's Motion to Dismiss asserts several grounds for dismissal, and Plaid believes the motion will lead to complete dismissal, or at least substantially narrow the CAC and scope of discovery.

Plaid's motion demonstrates that: (1) Plaintiffs never allege that they actually used Plaid to connect their financial accounts to their chosen apps, nor – even if they did connect through Plaid – that they ever took any steps to disconnect their accounts or ask Plaid to delete their data. (2) Plaintiffs lack standing because they assert, at best, attenuated and hypothetical claims for damages which fail to satisfy the Article III requirements. (Plaintiffs also fail to plead causation and redressability.) *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016). (3) The relevant statutes of limitation time bar many of Plaintiffs' claims as a matter of law. (4) Because Plaintiffs' claims for monetary damages provide Plaintiffs with an adequate remedy at law, and because Plaintiffs have otherwise failed to meet their burden to show why that remedy is inadequate, their equitable claims and remedies should be dismissed with prejudice (*e.g.*, restitution, disgorgement, and injunctive and declaratory relief). *See Sonner v. Premier Nutrition Corp.*, 962 F.3d 1072, 1082 (9th Cir. 2020). (5) Plaintiffs fail to plead facts to state a claim for any of their alleged causes of action. *Ashcroft v.*

¹ Assuming that Plaintiffs file on their deadline. ECF No. 57 at 1 ("Defendant shall file any reply in support of any responsive motion 21 days after Plaintiffs' opposition is filed.").

Iqbal, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). (6) Plaid’s privacy policy, and those of the apps the Plaintiffs used to link to their financial accounts, contradict Plaintiffs’ claims and demonstrate they are implausible and should be disregarded. ECF No. 81.

The Court’s ruling on any of these arguments in Plaid’s favor would dismiss or substantially curtail Plaintiffs’ claims and obviate the need for all, or some substantial part, of the discovery that might be taken in this case. The ruling could similarly streamline management of the case.

IV. ARGUMENT

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

A case schedule that is efficient and 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’s Motion to Dismiss demonstrates that Plaintiffs’ claims fail as a matter of law. Plaid’s requested relief, if granted, would render the CMC and attendant deadlines a wasted effort for all. Efficient and orderly proceeding of this action would thus be furthered by first defining the scope of the claims (if any remain) and defenses in this case through the Court’s ruling on the Motion to Dismiss before engaging in substantial work toward discovery and further litigating this case.

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 District “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) (Grewal, J.). Some examples of such decisions in this District are:

- *Thomas v. Kimpton Hotel & Rest. Grp., LLC*, No. 19-CV-01860-MMC, (N.D. Cal. July 3, 2019), ECF No. 27 (Chesney, J.) (continuing initial CMC “[i]n light of the pending motion to dismiss”);
- *Micron Tech., Inc. v. United Microelectronics Corp.*, No. 17-CV-06932-MMC (N.D. Cal. May 2, 2019), ECF No. 39 (Chesney, J.) (continuing CMC “to give [the court] time to resolve the pending motion to dismiss, which may narrow the scope of this case.”);
- *Antman v. Uber Techs., Inc.*, No. 3:15-CV-01175-LB, (N.D. Cal. June 19, 2015), ECF Nos. 26 and 41 (Beeler, J.) (twice continuing CMC “given the pending Motion to Dismiss” and ruling on Uber’s motion to dismiss before the rescheduled CMC date);
- *Perry v. Select Portfolio Servicing, Inc.*, No. 15-cv-03629-RS (N.D. Cal. Nov. 3, 2015), ECF No. 39 (Seeborg, J.) (granting motion to dismiss with leave to file amended complaint and accordingly continuing the CMC until after filing of amended complaint);
- *Scandlon v. Blue Coat Sys., Inc.*, 2013 WL 308879, at *5 (N.D. Cal. Jan. 25, 2013) (Seeborg, J.) (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 Preservation of judicial economy dictates that even for eager parties both wanting an earlier
 2 CMC, “conducting a CMC on [such a] date would be inappropriate in light of defendants’ pending
 3 motions to dismiss.” *Azad v. Tokio Marine HCC - Med. Ins. Servs. Grp.*, No. 17-cv-00618-PJH
 4 (N.D. Cal. May 26, 2017), ECF No. 77 (Hamilton, J.) (explaining that “it is not this court’s typical
 5 practice to conduct a case management conference (CMC) until the pleadings are settled” and
 6 although the parties stipulated to an earlier CMC date “[t]he court will reschedule the initial CMC
 7 once it has ruled on the pending Rule 12(b) motions.”).

8 Because Rule 26 discovery is impacted by the date of the initial CMC, good cause exists to
 9 stay discovery where a pending motion may resolve “potentially dispositive” issues. *Carter v. Oath*
 10 *Holdings*, 2018 WL 3067985, at *4 (N.D. Cal. June 21, 2018); *Azad*, No. 17-cv-00618-PJH (N.D.
 11 Cal. May 26, 2017), ECF No. 77 (“Insofar as the date of the Rule 26(f) conference is based on the
 12 date of the initial CMC, no discovery will be permitted, by operation of the Federal Rules of Civil
 13 Procedure, until the court has ruled on the motions and rescheduled the initial CMC.”); *Gibbs v.*
 14 *Carson*, 2014 WL 172187, at *3 (N.D. Cal. Jan. 15, 2014); *cf. Bell Atl. Corp. v. Twombly*, 550 U.S.
 15 544, 558 (2007) (“complaint ... could not raise a claim of entitlement to relief, ‘this basic deficiency
 16 should ... be exposed at the point of minimum expenditure of time and money’” (citation omitted)).

17 Notably, a stay is particularly appropriate where the “[d]efendant challenges Plaintiffs’
 18 Article III standing,” as Plaid has done here. *See Camacho v. United States*, 2014 WL 12026059, at
 19 *3 (S.D. Cal. Aug. 15, 2014); *see also Al Otro Lado, Inc. v. Nielsen*, 2018 WL 679483, at *3 (S.D.
 20 Cal. Jan. 31, 2018). Requiring the Parties to engage in discovery of issues that may be mooted if
 21 Plaid succeeds on its Motion to Dismiss, and forcing the Parties to engage in the inevitable
 22 negotiation around the 26(f) report, would be highly inefficient for both the Parties and the Court.

23 **C. Plaintiffs Will Not Be Prejudiced By Continuing The CMC, Whereas Plaid Will Be**
 24 **Prejudiced If the CMC Is Not Continued**

25 Arguments that memories will “fade” and evidence will be “lost” (*see*, ECF No. 54 at 3) fail
 26 in light of the brief requested CMC continuance and discovery stay, and the Parties’ compliance with
 27 document preservation. Plaid is not requesting indefinite delay—instead, merely that the CMC be
 28 deferred until after the Court rules on 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). The Parties have stipulated that they are already preserving information in accordance with their obligations (ECF No. 51 ¶ 10). 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 will fall flat. Continuing the CMC and attendant Rule 26 discovery deadlines until after the resolution of the Motion to Dismiss is most efficient because (1) the Parties will be able to appropriately tailor their required Rule 26 disclosures and the course and scope of discovery to whatever claims and allegations remain in the case (if any) at the time, and (2) the Court will be better positioned to issue a Case Management Order consistent with the actual scope of the case.

Alternatively, proceeding with the October 7, 2020 CMC—amid the Parties’ Motion to Dismiss briefing—will require the Parties to engage in discovery and the Court to enter a Case Management Order, without the benefit of understanding the actual scope of the remaining case (if any) after the Motion to Dismiss. Such an outcome would force the Parties to engage in potentially extensive Rule 26 discovery that may not be in conformity to the actual contours of the case following the Court’s order on the Motion to Dismiss. The end result of this would be – depending on the outcome of that ruling – expensive and time-consuming discovery, wasting effort and money on irrelevant discovery, as well as potentially time-consuming disputes related to that discovery.

V. CONCLUSION

Plaid respectfully requests the Court vacate the CMC currently scheduled for October 7, 2020, and reschedule it for a date after the resolution of Plaid’s Motion to Dismiss.

1 Dated: September 14, 2020

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

3 /s/ Ethan D. Dettmer

4 By: Ethan D. Dettmer

5 *Attorneys for Defendant Plaid Inc.*