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June 3, 2025

VIA ECF

The Honorable Vera M. Scanlon
Chief Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

JOINT LETTER MOTION TO STAY DISCOVERY

Re: *Kolbert v. Benworth Capital Partners LLC et al.*, Case No. 1:25-cv-00117-FB-VMS

Dear Magistrate Judge Scanlon:

Defendants Oto Analytics, LLC f/k/a Oto Analytics, Inc., d/b/a Womply ("Womply"), and Toby Scammell (together with Womply, the "Womply Defendants"), jointly with Defendants Benworth Capital Partners LLC ("Benworth"), Benworth Capital Partners PR LLC, Benworth Financial LLC, Bernardo Navarro, and Claudia Navarro (collectively, the "Benworth Defendants"), respectfully submit this Letter Motion to stay discovery pending resolution of Defendants' forthcoming motions to dismiss Plaintiff's amended complaint (the "Amended Complaint" or the "AC").

Before filing this Letter Motion, Defendants conferred in good faith with Plaintiff's counsel, who informed us he would oppose the first prong of the motion that goes to the merits of the claims and defenses.

Plaintiff's claims concern the Paycheck Protection Program ("PPP"), a COVID-19 era federal government loan program. The Amended Complaint alleges that, in February 2021—just three months before the PPP stopped accepting applications in May 2021—Defendant Womply developed a technology platform called "PPP Fast Lane" that allowed (i) applicants to apply for government-guaranteed PPP loans from private lenders, and (ii) PPP lenders (including Benworth) to efficiently process and manage those applications. (AC ¶¶ 123–127.) Plaintiff alleges that, on or about May 2, 2021, an unknown individual received an $18,803 PPP loan in Plaintiff's name from Benworth. (*Id.* ¶¶ 59–74.)

Plaintiff further claims that the U.S. Department of the Treasury garnished $476.57 of Plaintiff's social security benefits to repay a portion of the loan but paused collections after being notified of the fraud. (*Id.* ¶¶ 7, 62.) Thus, Plaintiff's ***total alleged monetary harm is less than $500***. But Plaintiff ***does not*** allege that Defendants are responsible for a third party stealing his identity. Rather, he broadly alleges that Defendants failed to implement proper fraud controls, resulting in third party applicants fraudulently applying for PPP loans from Defendant Benworth using PPP Fast Lane. (*Id.* ¶¶ 197, 238.) The Amended Complaint asserts claims for violations of Section 1962 of the RICO statute, and state law claims for negligence, unjust enrichment, violation of Section 349 of the New York General Business Law, and declaratory judgment.

Plaintiff filed his original complaint on January 7, 2025. On March 14, 2025, Defendants filed letter motions seeking a pre-motion conference in anticipation of their forthcoming motions to dismiss all of Plaintiff's claims. (ECF Doc. Nos. 16 and 17.) A pre-motion conference was held before Judge Frederick Block on April 25, 2025, and Plaintiff was granted three weeks to serve and file a final amended complaint. Plaintiff filed his Amended Complaint on May 16, 2025. (ECF Doc. No. 32.) On May 30, 2025, Defendants again filed letter motions seeking a pre-motion conference in anticipation of motions to dismiss all of Plaintiff's claims. Those letter motions are currently pending before Judge Block and are attached hereto as Exhibits A and B. On May 22, 2025, all parties jointly requested to adjourn the initial conference and to stay discovery pending briefing of Defendants' motions to dismiss. On May 30, 2025, Your Honor issued a minute order denying the request without prejudice, stating that "the motion fails to provide the Court with sufficient information to determine whether a stay of discovery is appropriate in this action."

Defendants now jointly request a stay of discovery. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants." *Sharma v. Open Door NY Home Care Servs., Inc.*, 345 F.R.D. 565, 567-68 (E.D.N.Y. 2024) (quotations omitted). Federal Rule of Civil Procedure 26(c)(1) "allows a court for good cause, to issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* (quotations and citations omitted). To that end, upon a showing of good cause, a district court has considerable discretion to stay discovery pursuant to Rule 26(c). *Id.* (citations and quotation marks omitted). "In evaluating whether a stay of discovery pending resolution of a motion to dismiss is appropriate, courts typically consider: (1) whether the defendant has made a strong showing that the plaintiff's claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay." *Id.* (citation and quotation marks omitted). "[T]here can be little doubt that simplification of the issues and prejudice to the opposing party are more important than the case's state of completion." *Id.* (quoting *OV Loop, Inc. v. Mastercard Inc.*, No. 23-CV-1773 (CS), 2023 WL 7905690, at *2 (S.D.N.Y. Nov. 16, 2023)). As discussed below, the circumstances here weigh heavily in favor of a stay.

First, as twice previewed in the letter motions to Judge Block requesting a pre-motion conference, all of Plaintiff's claims should be dismissed. Defendants contend that Plaintiff's RICO claims—the only basis for this case to be in federal court—suffer from numerous fatal deficiencies. Plaintiff does not plead a "pattern of racketeering activity." *MAVL Cap., Inc. v. Marine Transp. Logistics, Inc.*, 130 F. Supp. 3d 726, 733 (E.D.N.Y. 2015). The pattern pleading requirement can be satisfied by alleging (i) a series of related predicate acts occurring over a period of more than two years (a "closed-ended" scheme), *Rosner v. Rosner*, 766 F. Supp. 2d 422, 425 (E.D.N.Y. 2011), or (ii) that there is a "threat of continuing criminal activity beyond the period during which the predicate acts were performed" (an "open-ended" scheme), *MAVL Cap.*, 130 F. Supp. 3d at 732. Plaintiff does neither. Instead, Plaintiff alleges that PPP Fast Lane, through which Defendants implemented their alleged scheme, was in operation for less than ***four months***, and the PPP stopped accepting application in May 2021—more than four years ago. (AC ¶ 211.)

Plaintiff also lacks RICO standing because there is no "direct" connection between Defendants' conduct and Plaintiff's alleged injury. *Holmes v. Secs. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992). Plaintiff instead alleges a scheme that was directed at defrauding the "government and the

Federal Reserve Bank's lending facilities." (AC ¶¶ 89–92.) Nor does Plaintiff allege the predicate acts with the particularity required under Rule 9(b), *Flexborrow LLC v. TD Auto Fin. LLC*, 255 F. Supp. 3d 406, 422 (E.D.N.Y. 2017), or adequately allege "an agreement to commit predicate acts" as required for his RICO conspiracy claims to survive, *id.* at 425 (cleaned up); *see also Iqbal v. Hasty*, 490 F.3d 143, 157 (2d Cir. 2007) (citations omitted) (recognizing the need for specificity in pleading before allowing a "bare allegation" of a conspiracy to survive a motion to dismiss and lead to massive discovery).

Plaintiff's state law claims also are deficient. Among other reasons, the unjust enrichment claim fails because Plaintiff does not allege that Defendants received something of value from Plaintiff, the negligence claim fails because it is time-barred and Defendants owed no duty of care to Plaintiff, and the claim for violation of Section 349 of the New York General Business law is similarly time-barred. The declaratory judgment claim also fails because it does not seek to define the rights between or among Plaintiff and Defendants, but instead concerns the rights of Plaintiff, the unknown fraudster who applied for a loan in Plaintiff's name, and the federal government.

Second, Defendants will unfairly be compelled to incur substantial expense if they must respond to extensive discovery concerning meritless legal claims that are likely to be dismissed. *See Telesca v. Long Island Hous. P'ship, Inc.*, No. CV 05-5509 (ADS) (ETB), 2006 WL 1120636 at *1 (E.D.N.Y. Apr. 27, 2006) (court considered substantial expenses associated with conducting discovery in granting stay); *Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94-CIV-2120 (LMM) (AJP), 1996 WL 101277, at *3 (S.D.N.Y. Mar. 7, 1996) (explaining that the breadth and burden of discovery are "[t]wo related factors" a court should consider). The parties have not yet exchanged discovery requests, but the discovery burden on Defendants is likely to be substantial unless the scope of discovery is narrowly tailored to the single loan about which Plaintiff complains. The duration of Defendants' alleged scheme is short—less than four months—but it involves an intensive lending program in which Benworth funded more than 300,000 PPP loans using Womply's PPP Fast Lane platform. (AC ¶ 4.) Plaintiff's RICO allegations include accusations about Defendants' policies and practices with respect to that program and those loans. To the extent that Plaintiff seeks overbroad discovery relating to the PPP loan program, then this discovery burden will be borne not only by corporate Defendants, but also by the three individual Defendants.[1] Plaintiff's discovery burden, on the other hand, is likely to be light by comparison. Taking the Amended Complaint's facts as pled, Plaintiff's burden may be limited to providing information concerning the garnishment of his social security benefits as well as information relating to his identity theft. Were Plaintiff's RICO claims to be dismissed (which is likely), the scope of discovery may be substantially narrowed—and, in fact, the Court may choose not to exercise supplemental jurisdiction over the remaining state law claims.

It would be unduly burdensome for Defendants to be compelled to engage in such broad discovery pending the outcome of their motions to dismiss, particularly given the small damages at issue. The Amended Complaint alleges that Plaintiff may have lost, at most (and possibly temporarily), less than $500. The Amended Complaint also alleges injuries to Plaintiff's reputation, but as noted in the Benworth Defendants' pre-motion letter, those damages are not cognizable under RICO.

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[1] Defendants do not concede that such broad discovery would be warranted or permissible under applicable rules.

(ECF No. 36 at 2.) Unless Defendants' motions to dismiss are fully briefed and resolved first, Defendants will be confronted with the tremendous burden and expense of responding to far-reaching discovery including, but not limited to, electronic discovery.

Third, there is no risk that Plaintiff will be prejudiced by a stay of discovery as the relief sought is purely monetary. (AC Prayer for Relief at 69.) Further, Plaintiff has twice sought a stay of discovery until Defendants' motions to dismiss were fully briefed, (ECF Doc. Nos. 30, 33), with knowledge of the basis for Defendants' forthcoming motions, (ECF Doc. Nos. 16, 17). Accordingly, it would be disingenuous for Plaintiff to now claim that he would be prejudiced by a discovery stay.

Finally, a stay of discovery is especially appropriate here because Plaintiff has not pleaded facts sufficient to support the exercise of personal jurisdiction. (AC ¶¶ 30–32, 124 (alleging only that Defendants "availed themselves" of New York and advertised in New York but failing to allege facts showing that the controversy "arose" out of Defendants' contacts with the forum)); *see also Vida Press v. Dotcom Liquidators, Ltd.*, No. 22-CV-2044 (HG) (JMW), 2022 WL 17128638, at *2 (E.D.N.Y. Nov. 22, 2022) (granting stay of discovery where defendants "ma[d]e a strong showing that personal jurisdiction may be lacking"); *Port Dock & Stone Corp. v. Oldcastle Northeast, Inc.*, No. CV 05-4294 (DRH) (ETB), 2006 WL 897996, at *2 (E.D.N.Y. Mar. 31, 2006) (granting discovery stay pending resolution of defendants' motion to dismiss for lack of personal jurisdiction where the motion raised "substantial issues with regard to the viability of plaintiffs' complaint" and "plaintiffs have failed to demonstrate that a stay of discovery would unfairly prejudice them"). Defendants Toby Scammell, Claudia Navarro, and Bernardo Navarro also have not been properly served.

Defendants therefore respectfully request that the Court stay all discovery pending the resolution of Defendants' forthcoming motions to dismiss. *See United States v. County of Nassau*, 188 F.R.D. 187, 188-89 (E.D.N.Y. 1999) (granting stay of discovery during the pendency of motion to dismiss where the "interests of fairness, economy, and efficiency . . . favor[ed] the issuance of a stay of discovery," and where plaintiff failed to demonstrate prejudice in the event of a stay); *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (granting stay of discovery where the burden of discovery, even if "not outrageously broad," would "unnecessarily drain the parties' resources" in light of the pendency of the motion to dismiss).

Respectfully submitted,

/s/ Alexander L. Cheney