

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SIMPLE HEALTH PLANS LLC, et al.,

Defendants.

Case No.: 18-cv-62593-DPG

**DEFENDANT STEVEN DORFMAN'S MOTION TO STAY DISCOVERY
AND PRE-TRIAL DEADLINES PENDING RULING ON MOTION TO DISMISS**

Defendant, Steven Dorfman (“**Dorfman**”), through undersigned counsel, files this motion seeking to stay discovery and all pre-trial deadlines pending the Court’s ruling on Dorfman’s *Motion to Dismiss* (the “**Motion to Dismiss**”) [DE 134] and states:

Background

On October 29, 2018, Plaintiff, the Federal Trade Commission (the “**FTC**”), filed the complaint (the “**Complaint**”) [DE 1] initiating this matter against Dorfman and his corporate co-defendants pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Therein, the FTC alleges that the Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, by engaging in unfair and deceptive trade practices relating to the marketing, advertising, and sale of health insurance products.

On April 29, 2019, Dorfman filed his Motion to Dismiss, seeking to dismiss all claims in the Complaint because, among other things: (i) the Complaint is a “shotgun pleading” that improperly lumps all defendants together without allocating alleged conduct to any of them and, thus, does not meet the requirements of Rule 8 of the Federal Rules of Civil Procedure, *see* Motion to Dismiss, 3-5; (ii) the FTC failed to please the claims with requisite particularity, *see* Motion to

Dismiss, 5-6; (iii) the Complaint fails to state claims upon which relief may be granted, *see* Motion to Dismiss, 7-15; and (iv) the McCarran-Ferguson Act's reverse-preemption doctrine proscribes the FTC's claims, Motion to Dismiss, 17-19.

The Motion to Dismiss is fully briefed as the FTC has filed a response in opposition to the motion [DE 138] and Dorfman has filed a reply in support of the motion [DE 141].

Relief Requested and Basis Therefor

All discovery and pre-trial matters should be stayed pending final resolution of the Motion to Dismiss to conserve the parties' limited resources.

The Eleventh Circuit Court of Appeals has recognized that challenges to legal sufficiency of a claim "should be resolved before discovery begins. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997); *see also, Cotton v. Massachusetts Mutual Life Ins. Co.*, 402 F.3d 1267, 1291 (11th Cir. 2005) (same); FED.R.CIV.P. 26(b)(2) (recognizing the authority of federal courts to limit the scope of discovery). In *Chudasma*, the Eleventh Circuit states:

If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided. Conversely, delaying ruling on a motion to dismiss such a claim until after the parties complete discovery encourages abusive discovery and, if the court ultimately dismisses the claim, imposes unnecessary costs. For these reasons, any legally unsupported claim that would unduly enlarge the scope of discovery should be eliminated before the discovery stage, if possible. Allowing a case to proceed through the pretrial process with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity of the public's perception of the federal judicial system.

In sum . . . when faced with a motion to dismiss a claim for relief that significantly enlarges the scope of discovery, the district court should rule on the motion before entering discovery orders, if possible.

Chudasama, 123 F.3d at 1368.

Given the strong policy and practical reasons for determining whether the claims in a complaint are viable before the parties engage in discovery, the Eleventh Circuit has “instructed” that it is appropriate to delay discovery until the district court determines that there is a cognizable basis for the case to continue. *See Moore v. Potter*, 141 Fed. Appx. 803, 807-808 (11th Cir. 2005) (affirming stay of discovery during pendency of motion to dismiss complaint). Indeed, in many instances the judges Eleventh Circuit Court of Appeals and Southern District of Florida have affirmed the importance of staying discovery and pre-trial matters pending a final ruling on a motion to dismiss. *See, e.g., Roberts v. FNB South of Alma, Georgia*, 716 Fed.Appx. 854, 857 (11th Cir. 2017); *Dragash v. Federal National Mortgage Assoc.*, 700 Fed.Appx. 939, 946-47 (11th Cir. 2017); *Rivas v. Bank of New York Mellon*, 676 Fed.Appx. 926, 932 (11th Cir. 2017); *Zinn v. SCI Funeral Services of Florida, Inc.*, 2013 WL 12080175, *1-2 (S.D.Fla. Mar. 4, 2013) (Ryskamp, J.); *Solar Star Sys., LLC v. Bellsouth Telecoms., Inc.*, 2011 WL 1226119, *1 (S.D.Fla. Mar. 30, 2011) (Moreno, J.); *Staup v. Wachovia Bank, N.A.*, 2008 WL 1771818, *1 (S.D.Fla. Aug. 16, 2008) (Cohn, J.); *Carcamo v. Miami-Dade County*, 2003 WL 24336368, *1 (S.D.Fla. Aug. 1, 2003) (Ungaro, J.).

Given that Motion to Dismiss is fully briefed, a temporary stay of discovery and all pretrial deadlines in this proceeding is warranted to avoid causing the parties to incur substantial, potentially unnecessary costs and fees. The relief requested herein will also reduce the burden on the Court’s resources especially since the Court’s ruling on the Motion to Dismiss ***may resolve this entire proceeding***. The relief is particularly appropriate given that the preliminary injunction entered in this proceeding gives the Receiver continuing control over the Defendants’ assets, which are frozen, and the Defendants are enjoined from continuing their pre-suit operations. Therefore,

there is no risk of dissipation of the defendants' assets or potential additional alleged harm to victims. Simply put, there is no reason to not stay this proceeding pending resolution of the Motion to Dismiss and any party would be hard-pressed to make a genuine argument as to why the proceeding should not be stayed pending the motion's resolution.

To the extent that the FTC or Court is concerned about the amount of additional time it may take to consider and rule on the Motion to Dismiss, Dorfman consents to a preliminary ruling on the motion by a magistrate judge.

WHEREFORE, Defendant, Steven Dorfman, respectfully requests an Order of the Court, substantially in the form annexed hereto, staying all discovery, pre-trial matters, and current deadlines pending a ruling on the Motion to Dismiss and for all further relief the Court deems just and proper.

Local Rule 7.1(a)(3) Certificate

The undersigned certifies that he has conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

Dated: July 1, 2019

DLA Piper LLP (US)

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CERTIFICATE OF SERVICE

The undersigned certifies that he filed this pleading through the court's electronic filing system and that all parties requesting electronic notice of pleadings have been served with the pleading.

/s/ Ryan D. O'Quinn

Ryan D. O'Quinn