

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS AND RICK §
WAYNE MUNSON, §

Plaintiffs, §

V. §

CIVIL ACTION NO. 4:16-CV-01969

CANDACE KUNZ-FREED, ALBERT §
VACEK, JR., BERNARD LYLE §
MATHEWS III, NEAL SPIELMAN, §
BRADLEY FEATHERSTON, STEPHEN §
A. MENDEL, DARLENE PAYNE SMITH, §
JASON OSTROM, GREGORY LESTER, §
JILL WILLARD YOUNG, CHRISTINE §
RIDDLE BUTTS, CLARINDA §
COMSTOCK, TONI BIAMONTE, BOBBY §
BAYLESS, ANITA 'BRUNSTING, AND §
AMY BRUNSTING, §

Defendants. §

MOTION TO STAY RULE 26(F) CONFERENCE AND ALL DISCOVERY
PENDING RESOLUTION OF MOTIONS TO DISMISS

Defendants¹ file this motion respectfully requesting that the Court stay all discovery and other proceedings in this action, including the Rule 26(f) conference and initial pretrial and scheduling conference, until the Court rules on the Motions to Dismiss filed by Defendants. Each of the Motions to Dismiss on file with the Court has the potential to resolve the entire case and obviate the need for discovery altogether.

Pursuant to the Federal Rules of Civil Procedure, a court has discretion to stay discovery “for good cause shown.” FED. R. CIV. P. 26(c). A district court may limit discovery when a dispositive motion would preclude the need for discovery, saving the parties time and expense.

¹ “Defendants” refer to each undersigned Defendant that has been served and appeared in Case No. 4:16-cv-00733 as of October 13, 2016, except for Amy Brunsting.

See Ingram Corp. v. J. Ray McDermott & Co., 698 F.2d 1295, 1304 n.13 (5th Cir. 1983) (holding it was not an abuse of discretion for district court to fully stay discovery in the early stages of the dispute when claims and defenses presented threshold legal issues). And this is particularly true for motions to dismiss under Rule 12(b)(6), which are decided solely by reference to the complaint and proper attachments. *See Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 436 (5th Cir. 1990) (affirming entry of protective order where discovery was unnecessary to resolve pending dispositive motion).

In this case Plaintiffs have filed a 62-page Complaint with hundreds of pages of attachments alleging RICO, fraud, and other fiduciary duty claims against dozens of Defendants. *See* Dkt. No. 1. Most of the Defendants have filed Motions to Dismiss seeking the dismissal of all of Plaintiffs' claims, and additional Motions to Dismiss are expected to be on file in the near future. *See* Dkt. Nos. 19, 20, 23, 25, 26, 30, 35, 36, 39,40, and 53. Discovery is not necessary to resolve any of the Motions to Dismiss, which will be decided solely by reference to the Complaint and its attachments. *See Landry*, 901 F.2d at 436. And even if the pending Motions do not resolve all of the claims asserted, they are very likely to define and narrow the scope of discovery. *See Sai v. Dep't of Homeland Sec.*, 99 F. Supp. 3d 50, 58 (D.D.C. 2015) ("Both threshold motions raise significant issues, and their resolution will likely define the scope of discovery, if any.").

Thus, Defendants submit there is good cause to stay all discovery pending the outcome of the Motions to Dismiss and respectfully request that the Court stay all discovery, including the Rule 26(f) conference and the initial pretrial and scheduling conference, until the Court rules on the pending Motions to Dismiss.

Dated: October 13, 2016

Respectfully submitted,

/s/ Cory S. Reed

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CERTIFICATE OF CONFERENCE

On October 13, 2016 at 9:19 a.m., Rik Munson, spokesperson for Plaintiffs, stated Plaintiffs were unopposed to the proposed Motion to Stay the Rule 26(f) Conference and all discovery pending resolution of the motions to dismiss. On October 13, 2016 at 11:14 a.m., Rik Munson stated that Plaintiffs are now opposed. An attempt was made to contact Defendant Amy Brunsting, however at the time of this filing, Defendant Amy Brunsting has not expressed her position. In light of her pending Motions to Dismiss, it is presumed by the undersigned that she is unopposed.

/s/ Cory S. Reed

Cory S. Reed

CERTIFICATE OF SERVICE

I certify that on the 13th day of October, 2016, a true and correct copy of the foregoing was served via the Court's ECF system, which constitutes service on all parties.

/s/ Cory S. Reed

Cory S. Reed