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Sent via CM/ECF

April 4, 2024

The Honorable Theodore D. Chuang
United States District Judge for the District of Maryland
6500 Cherrywood Lane, Suite 245
Greenbelt, MD 20770

**Re: Notice of Intent to File Motion for Stay of Discovery and Scheduling Order
Deadlines Pending Resolution of Motion for Judgment on the Pleadings**
Yao v. Chen et al., Case No. 8:23-cv-00889-TDC

Dear Judge Chuang:

Pursuant to the Case Management Order (ECF 4), Defendants Robert Chen, Otter Audits LLC, and RC Security LLC respectfully file this Notice of Their Intent to File a Motion for a Stay of Discovery and Deadlines in the Scheduling Order, pending resolution of Defendants' Motion for Judgment on the Pleadings under Fed. R. Civ. P. 12(c).

Defendants will not be moving to stay or to reschedule the Case Management Conference set for April 9, 2024, at 10:30 a.m. Defendants would only move to stay subsequent deadlines in the Scheduling Order.

In tandem with this Notice, Defendants also file a Notice of Intent to File a Motion for Judgment on the Pleadings ("Rule 12(c) Motion"). If the Court grants the proposed Rule 12(c) Motion, all the claims in this case would be dismissed.

The Court's Scheduling Order provides that if the parties seek to modify any of the provisions of the Scheduling Order, they must notify the Court of that request by April 4, 2024. Scheduling Order (ECF 39). Therefore, Defendants file this Notice by that date. In addition, Federal Rule of Civil Procedure 26(c) allows a party to move for a protective order to protect the party from undue burden or expense. Fed. R. Civ. P. 26(c). For "good cause," the Court may forbid discovery or specify terms for the discovery. *Id.*

Here, there is good cause for a stay of discovery and of deadlines in the Scheduling Order pending the Court's resolution of Defendants' Rule 12(c) Motion.

Granting the Rule 12(c) Motion will dispose of all the claims in the Complaint. Permitting discovery pending disposition of this Rule 12(c) Motion will impose undue burden or expense on the Defendants because discovery will not be necessary if the Court dismisses the Complaint in this case. Indeed, even if the Court grants only partial judgment on the pleadings, that will limit the scope of discovery. As a result, the discovery, and the related deadlines in the Scheduling Order, should be stayed until disposition of Defendants' Rule 12(c) Motion, so that the parties do not engage in needless and expensive discovery on claims that may be dismissed.

Notice of Intent to File Rule 12(c) Motion

April 4, 2024

Page 2 of 3

As set forth in the accompanying Notice of Motion for Judgment on the Pleadings, the Defendants will argue that, under Wyoming law and the Operating Agreement, the dissolution of OtterSec LLC was proper. Dissolution was required under Section 1.3 of the Operating Agreement because, upon his death, Sam dissociated from OtterSec, Wyo. Stat. Ann. § 17-29-602(a)(vi)(A), terminating his membership in OtterSec. The Estate, as a transferee of a 40% economic interest in OtterSec, is not a member of OtterSec and had no right to participate in the management or conduct of the LLC, Wyo. Stat. Ann. § 17-29-502(a)(iii)(A), and thus had no right to prevent dissolution of OtterSec. Many of the claims must be dismissed because they are improperly pleaded as direct actions. They should be dismissed on that basis. *Fritchel v. White*, 2019 WY 117, ¶ 21, 452 P.3d 601, 606 (Wyo. 2019). These include the Lanham Act claim, the breach of fiduciary claims, and the claim for tortious interference. The Estate, as a transferee and not a member, does not have standing to bring a derivative claim, Wyo. Stat. Ann. § 17-29-903, and has never been deprived of its 40% economic interest in OtterSec. These are but some of the arguments set forth in the accompanying Notice of Motion for Judgment on the Pleadings.

A stay will also conserve judicial resources. The Court will not needlessly spend time resolving a potential motion to join David Chen as a party (a deadline now set for May 10, 2024) or involve itself in possible discovery disputes that will turn out to have been unnecessary if the Court dismisses the relevant claims on the Defendants' Rule 12(c) Motion.

Finally, in resolving Defendants' Motion for Judgment on the Pleadings, the Court looks to the parties' pleadings, not to any facts developed in discovery. "On [a 12(c)] motion, the court considers the pleadings, which consist of the complaint, the answer, and any written instruments attached to those filings, as well as any documents that are 'integral to the complaint and authentic.'" *Olukoya v. Sowore*, No. CV TDC-18-2922, 2020 WL 7769777, at *1 (D. Md. Dec. 30, 2020) (quoting *Occupy Columbia v. Haley*, 738 F.3d 107, 116 (4th Cir. 2013)). Therefore, discovery will not aid in resolving this Rule 12(c) Motion.

Plaintiff's counsel advised Defendants' counsel that they do not consent to a stay of discovery or other deadlines in the scheduling order in the event that Defendants file a Rule 12(c) motion.

Defendants respectfully request permission to file their Motion for a Stay of Discovery and Deadlines in the Scheduling Order Pending Resolution of the Defendants' Motion for Judgment on the Pleadings. Thank you for your time and consideration.

Sincerely,

/s/ Rachel Clattenburg

Rachel Clattenburg

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Notice of Intent to File Rule 12(c) Motion

April 4, 2024

Page 3 of 3

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