UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S & A CAPITAL PARTNERS, INC., MORTGAGE RESOLUTION SERVICING, LLC, and 1ST FIDELITY LOAN SERVICING, LLC, *Plaintiffs,*	:	No. 15-cv-00293-LTS-JCF
- v. -	:	
JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE & CO., and CHASE HOME FINANCE LLC,	:	**ORAL ARGUMENT REQUESTED**
Defendants.	:	

DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR CROSS-MOTION FOR PROTECTIVE ORDER

Robert D. Wick
Christian J. Pistilli
Philip J. Levitz
COVINGTON & BURLING LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000

Michael C. Nicholson
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
(212) 841-1000

Attorneys for Defendants

Defendants JPMorgan Chase Bank, N.A., individually and as successor by merger to Chase Home Finance LLC, and JPMorgan Chase & Co. (collectively, "Chase" or "Defendants") submit this Reply Memorandum of Law in further support of their cross-motion for a protective order.

ARGUMENT

I. THE COURT SHOULD STAY DISCOVERY RELEVANT ONLY TO PLAINTIFFS' RICO CLAIM PENDING A DECISION ON CHASE'S MOTION TO DISMISS THAT CLAIM.

Chase demonstrated in its prior brief that it is entitled to a stay of RICO-related discovery pending a ruling on its motion to dismiss. The RICO discovery sought by Plaintiffs is extremely broad, burdensome, and costly. The need for that discovery, moreover, is likely to be obviated by Chase's motion to dismiss Plaintiffs' implausible RICO claim. None of Plaintiffs' contrary arguments has merit.[1]

Plaintiffs' opposition to Chase's request for a protective order proceeds from the premise that it is impossible to distinguish "between the discovery relevant to the RICO claim and discovery relevant to the other claims" in this case. Pl. Opp. (ECF Doc. No. 103), at 5. That

[1] Any argument that the pendency of the separate *qui tam* action provides a basis to deny Chase's cross-motion or to permit discovery unrelated to the parties' private commercial relationship would be mistaken. *See* Cross-Mot. Mem. (ECF Doc. No. 99), at 9. As Chase has shown, "[t]he mere possibility that another litigant in another case [may] later have a legitimate argument for compelling discovery of the material at issue does not justify imposing an immediate, unreasonable discovery burden on defendants in the present case." *Hnot v. Willis Grp. Holdings Ltd.*, No. 01 CIV. 6558 (GEL), 2006 WL 2381869, at *5 n.8 (S.D.N.Y. Aug. 17, 2006); *see also Salvatorie Studios, Int'l v. Mako's, Inc.*, No. 01 CIV. 4430BSJDF, 2001 WL 913945, at *1 (S.D.N.Y. Aug. 14, 2001) ("Rule 26(b)(1) of the Federal Rules of Civil Procedure restricts discovery to matters relevant to the claims and defenses of the parties. Here, the burden is on [the party seeking discovery] to demonstrate relevance. [That party], however, has failed to establish that the [discovery] it seeks is in any way relevant to the claims or defenses raised in *this* action . . . ." (internal citation omitted)).

premise is incorrect. As Chase demonstrated in its prior brief, the complaint contains three, fundamentally distinct sets of allegations:

- First, Plaintiffs allege that Chase breached the terms of a $200,000 debt sale contract (referred to as the MLPA) with Plaintiff Mortgage Resolution Servicing, LLC and committed fraud in connection with the formation of the MLPA;
- Second, Plaintiffs allege that Chase committed breaches of contract and business torts by sending letters that purported to release loans and liens relating to debt that had been purchased by Plaintiffs; and
- Third, Plaintiffs allege that Chase engaged in a criminal conspiracy to evade its obligations under a pair of settlement agreements with the federal government by claiming consumer relief credit that it did not deserve.[2]

Chase is *not* seeking a protective order regarding the first two sets of allegations. To the contrary, Chase has agreed to produce documents relevant to the private, commercial dispute between the parties. Chase's narrow stay request relates only to the third, and entirely distinct, set of allegations.[3]

Once properly construed, it is clear that Chase's request for a limited discovery stay should be granted. As Chase established in its opening brief, each of the three factors considered by this Court for determining whether to grant a stay of discovery is satisfied here.

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[2] Plaintiffs assert that they are entitled to wide-ranging discovery, separate and apart from their fanciful RICO claim, because they "have asserted a fraud claim in this action." Pl. Opp. 2. The only common law fraud claim pleaded in the complaint, however, relates to Chase's alleged misrepresentations in connection with the formation of the MLPA. Pistilli Decl. Exh. B (ECF Doc. No. 100-2), ¶¶ 176-184. Accordingly, the discovery relevant to Plaintiffs' common law fraud claim is distinct from, and far narrower than, discovery relating to their RICO claim.

[3] For example, Chase has agreed to produce documents and data relating to loans that Plaintiffs purchased from Chase. This includes documents regarding the handful of instances in which Chase mistakenly sent loan forgiveness letters or recorded lien releases relating to loans purchased by Plaintiffs. Chase, however, should not be required to produce information regarding loans having nothing to do with Plaintiffs for which Chase sought consumer relief credit under government settlement programs. Such material is wholly irrelevant to Plaintiffs' business tort and breach of contract allegations.

First, adjudication of Chase's pending motion to dismiss "may obviate the need for burdensome discovery" in this case. *Johnson v. New York Univ. Sch. of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002). It is beyond genuine dispute that the wide-ranging discovery Plaintiffs seek would impose a substantial and disproportionate burden on Chase. Indeed, Plaintiffs' requested discovery would cost more than a million dollars for a single document custodian, and many millions more for the other 25 custodians requested by Plaintiffs. Verdelho Decl. (ECF Doc. No. 101), ¶¶ 13-20.[4] That is grossly disproportionate to a dispute arising principally out of a $200,000 debt sale contract. Cross-Mot. Mem. 13-15.

Plaintiffs counter that they are entitled to hundreds of millions of dollars in damages – based on the full face value of the defaulted debt they purchased for less than a penny on the dollar – but they make no effort to justify this far-fetched claim. Plaintiffs also argue that the parties' commercial dispute encompasses a number of individual defaulted loans that they purchased outside the framework of the MLPA. Pl. Opp. 7. But the only concrete allegations that they were *harmed* in connection with individual loans relate to a bare handful of loans. Pistilli Decl. Exh. B, ¶¶ 114-131, 142-143. These limited allegations about individual loans do not change the fact that the discovery sought by Plaintiffs is wholly disproportionate to the amounts in controversy here. *See Robertson v. People Magazine*, No. 14 CIV. 6759 (PAC), 2015 WL 9077111, at *2 (S.D.N.Y. Dec. 16, 2015) (recent amendment to Rule 26(b)(1)

[4] Plaintiffs complain that they have not been able to test Chase's showing though a Rule 30(b)(6) deposition. Plaintiffs neglect to inform the Court, however, that Chase offered Plaintiffs a corporate representative to testify regarding, among other things, its applicable document retention policies and the "location, storage, and maintenance of . . . documents and data regarding loans sold to Plaintiffs or offered to Plaintiffs." The June 8, 2016 email in which Chase offered this testimony is attached as Exhibit 1 to the Declaration of Christian J. Pistilli, submitted herewith.

"stress[es] the 'need for continuing and close judicial involvement' in ensuring proportionality" of discovery (quoting Advisory Committee's notes to 2015 amendment)).

Second, Plaintiffs do not deny that Chase's motion to dismiss their RICO claim has a strong "'foundation in law.'" Cross-Mot. Mem. 16 (quoting *In re Term Commodities Cotton Futures Litig.*, No. 12 CIV. 5126 ALC KNF, 2013 WL 1907738, at *5 (S.D.N.Y. May 8, 2013)). Plaintiffs agree that "courts must generally consider . . . whether the motion to dismiss has a legitimate 'foundation in law'" in determining the appropriateness of a stay, and they do not argue that Chase's motion to dismiss their RICO claim lacks such a foundation. Pl. Opp. 6.

Third, Plaintiffs fail to identify any prejudice that they would suffer as a result of a stay, much less the type of "extraordinary prejudice" that the law requires them to show. *See, e.g.*, *Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209, 211 (S.D.N.Y. 1991). Plaintiffs assert that they would be at a strategic disadvantage if a stay were entered because they have already produced "over 100,000 pages of documents." Pl. Opp. 7. To date, however, Plaintiffs' document production consists overwhelmingly – if not entirely – of loan files relating to individual loans that Plaintiffs purchased. Individual loan files are not subject to Chase's requested discovery stay, and Chase has already agreed to produce similar materials to Plaintiffs upon entry of an appropriate order protecting the private information of the borrowers.

Plaintiffs also argue that Chase's motion should be denied because Chase has requested documents from Plaintiffs regarding, for example, "Chase's alleged violations of any agreements with federal and state governments, including the National Mortgage Settlement and the RMBS Settlement referenced in paragraphs 146-47 of the TAC." Pl. Opp. 4. As discussed above, it does not appear that Plaintiffs have produced documents responsive to this or any comparable request. Moreover, consistent with its request for a partial stay of discovery, Chase

would not expect Plaintiffs to produce any documents unrelated to the parties' commercial relationship prior to a resolution of Chase's motion to dismiss the RICO claim. Under these circumstances, Plaintiffs will not suffer any prejudice as a result of the stay requested by Chase.

CONCLUSION

For the foregoing reasons, Chase's cross-motion for a protective order should be granted.

Dated: Washington, DC
June 22, 2016

Respectfully submitted,

By: s/ Robert D. Wick
Robert D. Wick

Christian J. Pistilli
Philip J. Levitz
COVINGTON & BURLING LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-6000
Facsimile: (202) 662-6291
rwick@cov.com
cpistilli@cov.com
plevitz@cov.com

Michael C. Nicholson
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405
Telephone: (212) 841-1000
mcnicholson@cov.com

Attorneys for Defendants