IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

MARIA SNYDER, Plaintiff, vs. CACH, LLC, and MANDARICH LAW GROUP, LLP, Defendants.	CIVIL NO. 16-00097 ACK-KJM ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO STAY DISCOVERY

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO STAY DISCOVERY

On July 27, 2016, Defendants CACH, LLC and Mandarich Law Group, LLP (collectively "Defendants") filed a Motion to Stay Discovery ("Motion"). ECF No. 31. Plaintiff Maria Snyder ("Plaintiff" or "Snyder") filed her Memorandum in Opposition to Defendants' Motion on August 17, 2016. ECF No. 34. Defendants filed their Reply in Support of their Motion on August 23, 2016. ECF No. 35.

The Court held a hearing on this matter on September 7, 2016 at 10:00 a.m. *See* ECF No. 36. Thomas M. McGreal, Esq. appeared by telephone on behalf of the Defendants. Justin A. Brackett, Esq. appeared on behalf of Plaintiff. The Court, having reviewed and considered the Motion, briefs, declarations, exhibits, and arguments of the parties in their written submissions and during the hearing,

and being fully advised in this matter, hereby GRANTS the Motion in part and DENIES the Motion in part.

BACKGROUND

Snyder filed the instant lawsuit on March 7, 2016, seeking declaratory and injunctive relief, as well as actual and statutory damages, for Defendants' alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), Hawaii Revised Statutes ("HRS") sections 443B-18, 19, 20 (regulating collection agencies) and Hawaii's Unfair or Deceptive Acts of Practices law ("HUDAP"), HRS chapter 480. ECF No. 1. Defendants filed a Motion to Compel Arbitration and Dismiss Claims ("Motion to Compel Arbitration"), which is set for hearing on October 3, 2016. ECF No. 19. Defendants then filed the present Motion asking the Court to stay all discovery pending the Court's ruling on the Motion to Compel Arbitration.

DISCUSSION

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). The Supreme Court has held that in passing upon an application for a stay while the parties arbitrate, a federal court may consider only issues relating to the making and performance of the agreement to arbitrate. *Prima Paint Corp. v. Flood & Conklin Mfg. Col.*, 388 U.S. 395, 404 (1967).

In the interest of conserving the parties' resources, the Court would typically be inclined to order a short stay of all discovery pending the determination of the Motion to Compel Arbitration. *See e.g.*, Fed. R. Civ. P. 1 ("These rules . . . should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."). If Defendants' Motion to Compel Arbitration is granted, litigation will proceed in an arbitral forum, not in this Court. And "[i]f a dispute is arbitrable, responsibility for the conduct of discovery lies with the arbitrators . . . ." *CIGNA Health Care of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 855 (7th Cir. 2002) (citing 9 U.S.C. § 7).

Plaintiff, however, asserts that she needs certain discovery related to the arbitration agreement to oppose the pending Motion to Compel Arbitration. Specifically, she claims that the subject arbitration agreement "appears to be subject to a settlement in 2009 whereby its original creditor . . . agreed to waive the arbitration provisions in their contracts." ECF No. 34 at 6. Plaintiff contends that Defendants are "strategically delaying [Plaintiff's] discovery in effort to keep [Plaintiff] from being able to conduct the necessary discovery before the upcoming deadlines that have been set by this Court, especially the deadline to respond to the Motion to Compel Arbitration, which is currently set for September 12, 2016." *Id.* at 9.

Plaintiff's opposition does not identify the particular discovery requests to

which she needs responses for her opposition to the Motion to Compel Arbitration, nor did she provide her discovery requests to the Court. Defendants, though, did include Plaintiff's discovery requests with their reply brief. *See* ECF No. 35. The Court reviewed these discovery requests with the parties at the hearing. The Court finds that the only discovery requests that may bear on the arbitrability issue raised by Plaintiff are (i) Plaintiff's Request for Answer to Interrogatory nine, (ii) Plaintiff's Requests for Admissions forty-two and forty-three, and (iii) Plaintiff's Requests for Production of Documents one and seven:

> Interrogatories
>
> 9. In the form of a chronology, identify and describe in detail and with particularity, the process, events, and circumstances under which the Debt was referred, placed or otherwise assigned to the Defendants for collection, identifying all documents included in, related to, or reflecting such referral, placement, or assignment.
>
> Admissions
>
> 42. ADMIT THAT: A settlement was reached in Ross, et al. v. Bank of America, N.A., (USA), No. 05-cv-7116 (S.D.N.Y.) in 2010.
>
> 43. ADMIT THAT: The terms of the settlement in the matter of in Ross, et al. v. Bank of America, N.A., (USA), No. 05-cv-7116 (S.D.N.Y.) amended all MBNA, FIA Card Services, N.A., and Bank of America, N.A. accounts' arbitration clauses for the accounts open during the pendency of that case whereby the accounts would no longer would be subject to binding arbitration.

> Documents
>
> 1. Any and all documents identified in Response to all sets of Plaintiff's Interrogatories, Requests to Admission, Requests for Production of Documents and Requests for Statements.
>
> 7. The original contract for the Debt.

ECF No. 35-1 at 8, 15, 17, 18.

Given the relatively minimal time and expense Defendants will incur responding to these five discovery requests, which Plaintiff maintains are necessary for her to oppose the Motion to Compel Arbitration, the Court orders Defendants to respond to them, subject to any objections Defendants may have.

Beyond these five discovery requests, though, the Court finds that the remaining discovery Plaintiff has served on Defendants does not have any arguable impact on the Motion to Compel Arbitration. Nor has Plaintiff articulated any particularized need for the remaining discovery to oppose the Motion to Compel Arbitration. Under the circumstances, the parties should not be required to endure the expense of that discovery at this time. *Mundi v. Union Sec. Life Ins. Co.*, 2007 WL 2385069, at *6 (E.D. Cal. 2007) (finding that the parties should not be required to endure the expense of discovery that might not ultimately be allowed in arbitration); *Ross v. Bank of Am., N.A.*, 2006 WL 36909, at *1 (S.D.N.Y. 2006) ("[i]n view of the threshold issues concerning arbitration, this Court concludes that a stay of discovery is appropriate"); *Merrill Lynch, Pierce, Fenner & Smith Inc. v.*

Coors, 357 F. Supp. 2d 1277, 1281 (D. Colo. 2004) (issuing stay of "all discovery and pretrial scheduling" pending resolution of motion to compel arbitration). Thus, except as expressly noted, the Court stays discovery pending resolution of the Motion to Compel Arbitration.

CONCLUSION

In accordance with the foregoing, the Court GRANTS in part and DENIES in part Defendants' Motion. The Court DENIES the Motion as to (i) Plaintiff's Request for Answer to Interrogatory nine; (ii) Plaintiff's Requests for Admissions forty-two and forty-three; and (iii) Plaintiff's Requests for Production of Documents one and seven. Defendants are ordered to respond to these five discovery requests, subject to any objections Defendants may have. The Court GRANTS the Motion in all other respects and stays discovery until the Court issues a written decision on Defendants' Motion to Compel Arbitration.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, September 8, 2016.

/S/ Kenneth J. Mansfield
Kenneth J. Mansfield
United States Magistrate Judge