

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

KATIE VAN, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LLR, INC., d/b/a LuLaRoe, and LULAROE, LLC,	)	No. 3:18-cv-0197-HRH
	)	
Defendants.	)	
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ORDER

Case Status; Stay of Proceedings

As contemplated by the court’s order concerning a stay of proceedings,<sup>1</sup> the parties have filed their joint case status report<sup>2</sup> following the Ninth Circuit Court’s grant<sup>3</sup> of defendants’ petition for permission to appeal. In their joint report, the parties disagree as to whether and to what extent proceedings in this court should continue during the pendency of defendants’ appeal.

Defendants would have this court stay these proceedings until their Ninth Circuit appeal has been decided. Plaintiff would have this court amend certain scheduling deadlines, but allow other proceedings – in particular, fact discovery – to proceed.

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<sup>1</sup>Docket No. 153.

<sup>2</sup>Docket No. 157.

<sup>3</sup>Docket No. 156.

The United States Supreme Court has set the standard for consideration of stays of proceedings in Nken v. Holder, 556 U.S. 418 (2009), and Hilton v. Braunskill, 481 U.S. 770, 776 (1987). Under Nken and Hilton, the court considers the stay applicant's showing of likelihood of success on the merits, whether the applicant for a stay will be irreparably injured absent a stay, whether issuance of a stay will substantially injure other parties interested in the proceedings, and the public interest.

At the present time, the merits of this case focus upon this court's superiority decision. Fed. R. Civ. P. 23(b)(3). In the parties' joint report to the court, defendants have not made a strong showing of likelihood of success on the merits of their appeal of this court's decision that a class action was the superior method for determination of the controversy between the parties. However, the court recognizes that defendants' appeal poses a serious legal question regarding the extent to which, if at all, defendants' refund program should have a role in the superiority determination. But even with the existence of a serious legal question, the party seeking a stay must demonstrate that the balance of harm tips sharply in its favor. If the only solution here were to grant or deny a stay of all proceedings in this court, plaintiff's showing as to the balance of harm would be sufficient. However, as discussed below, the court is not presented with an all-or-nothing situation.

Regarding the irreparable injury factor, defendants' showing would be sufficient if the court were limited to either granting or denying a stay. Again, that's not the situation here. With the substantial input provided by the parties, it is clear that some proceedings

in this court should be stayed (e.g., notice to class members<sup>4</sup>), while it may be appropriate for other proceedings (some fact discovery) to go forward.

The court perceives there to be no substantial risk of injury to other parties if a partial stay of proceedings is granted.

Especially in light of the age of this case, there is some public interest in facilitating a resolution of this case as soon as possible after defendants' appeal is decided, while at the same time avoiding unnecessary attorney and court time pending a decision on the defendants' appeal.

The stay of proceedings as previously ordered<sup>5</sup> is now modified and extended as follows:

- (1) Notice to class members is stayed and shall be delayed until further order of the court after receipt of the mandate of the Ninth Circuit Court of Appeals after defendants' appeal is decided.
- (2) Expert discovery (identification of experts, expert reports, and expert deposition discovery) is stayed pending a further order of the court following receipt of the mandate of the Ninth Circuit Court of Appeals.
- (3) Except as to plaintiff's discovery authorized below, all motion practice, including currently unresolved discovery issues, dispositive motions, and Daubert/-motions in limine, is stayed pending a further

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<sup>4</sup>The parties agree that notice to class members be delayed until after the current appeal is decided.

<sup>5</sup>Docket No. 153.

order of the court order following receipt of the mandate of the Ninth Circuit Court of Appeals.

- (4) As regards fact discovery, which is presently scheduled to close **March 4, 2022**,<sup>6</sup> the court is persuaded that the completion of fact discovery in support of the presentation of the named plaintiff's Unfair Trade Practices Act case will not be a waste of the parties' time and efforts, irrespective of the outcome of the pending appeal. Unlike a great many of the potential class members, the named plaintiff's dealings with defendants was sufficiently extensive that she is likely to proceed with her case even if this class action matter were to fail completely.

It is reported to the court that plaintiff wishes to depose seven of defendants' employees plus a Rule 30(b)(6) organization deposition. It is unclear whether plaintiff wishes to take additional paper discovery. As to the latter, it would appear that plaintiff has had more than sufficient time to exhaust the possibilities of paper discovery.

- (5) The court understands that defendants may wish to complete some fact discovery. However, that fact discovery "relate[s] to currently disputed class certification issues."<sup>7</sup> Thus it appears that the fact discovery contemplated by defendants might be unnecessary, depending upon the decision of the Ninth Circuit Court of Appeals. Therefore, further fact discovery by defendants regarding class

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<sup>6</sup>Docket No. 138.

<sup>7</sup>Docket No. 157 at 13.

certification issues is stayed pending a further order of the court order following receipt of the mandate of the Ninth Circuit Court of Appeals.

Plaintiff's fact discovery in this case may proceed, subject to the extant schedule, on the condition that counsel for the parties meet and confer and agree as to who will be deposed, the subjects to be covered in depositions, and a schedule for the completion of that discovery.

### Conclusion

Further proceedings in this district court in this case are stayed until after **30 days** following the receipt of the mandate of the Ninth Circuit Court of Appeals in connection with defendants' pending appeal, provided, however, that plaintiff's fact discovery may be undertaken as above provided. Within **14 days** following issuance of the Ninth Circuit Court's mandate, counsel shall confer and jointly report to the court concerning any new scheduling matter(s) flowing from the decision of the Ninth Circuit Court on defendants' appeal.

DATED at Anchorage, Alaska, this 7th day of January, 2022.

/s/ H. Russel Holland  
United States District Judge