

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Kevin H Rindlisbacher, *et al.*,

No. CV-18-01131-PHX-JJT

10 Plaintiffs,

ORDER

11 v.

12 Steinway & Sons Incorporated,

13 Defendant.

14 At issue is Defendant Steinway & Sons Inc.'s ("Steinway") Motion to Stay
15 Discovery and Postpone Scheduling Conference Pending Resolution of Steinway's
16 Motion to Dismiss (Doc. 30), to which Plaintiffs filed a Response (Doc. 33). Defendant
17 also filed a Motion for Expedited Consideration of its Motion to Stay (Doc. 32). The
18 Court will deny both Motions.

19 In its Motion to Stay, Steinway requests a complete postponement of the pending
20 deadlines in this matter, included those deadlines for exchanging initial responses under
21 the Mandatory Initial Discovery Project ("MIDP") and those related to the Rule 16
22 Pretrial Scheduling Conference. (Doc. 30 at 2.) Pursuant to General Order 17-08, a party
23 that files "a responsive pleading . . . *must* serve its initial discovery responses no later
24 than 30 days after it files its responsive pleading." (Doc. 4 at 3 (emphasis added).) The
25 MIDP provides for two exceptions to this provision: (1) "if the Court approves a written
26 stipulation by the parties that no discovery will be conducted in the case"; and (2) "if the
27 parties jointly certify to the Court that they are seeking to settle the case and have a good
28 faith belief that it will be resolved within 30 days of the due date for their responses."

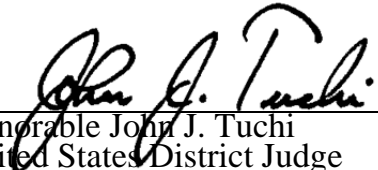
1 (Doc. 4 at 3–4.) The Order, however, contains no further provisions allowing the
2 postponement of the MIDP responses and further proceedings pending the resolution of a
3 motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6).

4 The MIDP is, by its nature, an experiment. (*See* Doc. 4 at 1.) Thus, those cases
5 cited by Steinway in support of its Motion are not applicable here because the MIDP was
6 not in effect in those matters. The Court is aware that completion of the MIDP responses
7 represents an expense to the parties and that if a motion to dismiss is later granted in
8 whole or in part, it might obviate some of those expenses to one or more parties. The
9 Court considered the costs of so requiring the MIDP responses prior to the resolution of
10 motions to dismiss when it elected to enact the pilot program.¹ As a result, the Court will
11 not delay the requirements of the MIDP. The vacancies on this Court, which have
12 persisted for over two years as of the date of this Order, have resulted in the remaining
13 active judges experiencing a rapidly growing caseload, which in turn has yielded greatly
14 increased pending motion inventories and a commensurately growing backlog queue. It is
15 impossible to predict when the Court will be able to reach the outstanding briefed
16 motions in this matter and many similarly situated matters.

17 IT IS THEREFORE ORDERED denying Defendant’s Motion to Stay Discovery
18 and Postpone Scheduling Conference Pending Resolution of Motion to Dismiss (Doc. 30).

19 IT IS FURTHER ORDERED denying as moot Defendant’s Motion for Expedited
20 Consideration of its Motion to Stay (Doc. 32).

21 Dated this 27th day of June, 2018.

22
23 
24 _____
25 Honorable John J. Tuchi
26 United States District Judge

27 _____
28 ¹ The MIDP reflects this consideration, as it expressly exempts only a party that files a
motion to dismiss “based on lack of subject-matter jurisdiction, lack of personal
jurisdiction, sovereign immunity, or absolute or qualified immunity of a public official”
from filing its “answer, counterclaims, crossclaims, and replies”—and thus, from
completing any discovery—until the Court resolves motion to dismiss. (Doc. 4 at 3.)