UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE LEAPFROG ENTERPRISE, INC. SECURITIES LITIGATION, _____/ This Document Relates to: All Actions.	Case No. 15-cv-00347-EMC **ORDER RE JOINT DISCOVERY LETTER OF JULY 27, 2017** Docket No. 134

The parties have submitted a joint letter, dated July 27, 2017, regarding a discovery dispute. Having considered the contents of that letter, the Court hereby rules as follows.

The Court is not persuaded by Defendants' contention that the filing of their motion for leave to file a motion to reconsider reinstated the PSLRA discovery stay. The authority cited by Defendants is not binding on this Court and, in any event, is distinguishable. Neither case involved a motion for *leave* to file a motion for reconsideration, as here.

Moreover, the PSLRA refers to a stay pending a motion to dismiss, not a motion for leave to file a motion for reconsideration or a motion to reconsider. *See* 15 U.S.C. § 78u-4(b)(3)(B) (providing that "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party"). Defendants' construction of § 78u-4(b)(3)(B) is not without some basis. *See Powers v. Eichen*, 961 F. Supp. 233, 235-36 (S.C. Cal. 1997) (focusing on the statute's use of the term "pendency" and asking whether "pendency" "should be read narrowly to mean that discovery may commence as soon as the district court rules on a motion to dismiss or more broadly to include the district court's reconsideration of a ruling on a motion to dismiss"; concluding that a narrow reading

would afford a defendant "very little of the protection that Congress intended in passing the Reform Act"). But countervailing that interpretation is the risk of delay and abuse. A defendant could file repeated motions for leave to file a motion to reconsider or motions for reconsideration and prolong the PSLRA discovery stay. *Cf. In re Salomon Analyst Litig.*, 373 F. Supp. 2d 252, 254-55 (S.D.N.Y. 2005) (noting that, "[i]n a case where the court already *has* sustained the legal sufficiency of the complaint," the purpose behind the PSLRA discovery stay "has been served" and "[t]o permit defendants indefinitely to renew the stay simply by filing successive motions to dismiss would be to invite abuse[;] some judicial discretion to evaluate the desirability of a renewed stay appears to be necessary") (emphasis in original).

Finally, as Plaintiff points out, a motion to reconsider a judgment under Rule 60(b) "does not affect the judgment's finality or suspend its operation." Fed. R. Civ. P. (c)(2). Defendants do not sufficiently explain why that principle should not equally apply here.

Defendants argue that, even if the PSLRA discovery stay has not been reinstated, Plaintiff's complaints are without merit because Defendants have produced what was agreed upon. *See* Letter at 3 (arguing that "[d]ocuments responsive to [categories] 1, 2, 4, 6, 7, and 9 have been produced" and, for the "outstanding items – [categories] 3 and 8 (essentially duplicative) were *expressly subject to the parties' conferring*") (emphasis in original). Plaintiff does not expressly address this argument in its portion of the letter and simply argues instead that Defendants have failed to produce documents they agreed to produce before mediation, including "written policies, correspondence with the SEC, and the basis for the Company's projected cash flows." Letter at 1-2.

Because the parties have not adequately appeared to meet and confer on the issue, the Court instructs the parties to further meet and confer in person to resolve the discovery dispute. Lead trial counsel is required to participate in person, absent good cause. The Court emphasizes

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that it does not expect Defendants to provide full merits discovery at this point; however, discovery should be sufficient for an informed mediation to go forward.

This order disposes of Docket No. 134.

IT IS SO ORDERED.

Dated: July 28, 2017

EDWARD M. CHEN
United States District Judge