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28United States District Court  
Northern District of CaliforniaUNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAFEDERAL TRADE COMMISSION,  
Plaintiff,  
v.  
LENDING CLUB CORPORATION,  
Defendant.Case No. [18-cv-02454-JSC](#)**ORDER RE DEFENDANT'S MOTION  
TO STAY**

Re: Dkt. No. 311

Lending Club Corporation moves to stay the case pending the United States Supreme Court's decision in the consolidated cases *F.T.C. v. Credit Bureau Ctr.*, see 2020 WL 3865251 at \*1 (U.S. July 9, 2020) (granting certiorari), and *AMG Capital Mgmt., LLC v. F.T.C.*, 2020 WL 3865250, at \*1 (U.S. July 9, 2020) (granting certiorari). (See Dkt. No. 311.) After carefully considering the parties' written submissions, and having had the benefit of oral argument on August 20, 2020, the Court GRANTS LendingClub's motion to stay.

**DISCUSSION**

The FTC brings this action under Section 13(b) of the FTC Act. (Dkt. No. 57 at ¶ 1.) Section 13(b) provides "[t]hat in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b). The Ninth Circuit has held that this provision affords federal courts broad discretion when fashioning remedies for the Act's violations, and it not limited solely to the power to issue an injunction. See *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994); see also *F.T.C. v. H. N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982) (holding that courts are empowered under Section 13(b) to order restitution, or "any ancillary relief necessary to accomplish complete justice").

LendingClub argues Credit Bureau and AMG Capital endanger this authority. The Seventh Circuit in *Credit Bureau* overturned circuit precedent and held that "section 13(b)'s

1 permanent-injunction provision does not authorize monetary relief.” Fed. Trade Comm'n v. Credit  
2 Bureau Ctr., LLC, 937 F.3d 764, 786 (7th Cir. 2019), cert. granted sub nom. F.T.C. v. Credit  
3 Bureau Ctr., No. 19-825, 2020 WL 3865251 (U.S. July 9, 2020), and cert. denied sub nom. Credit  
4 Bureau Ctr. v. F.T.C., No. 19-914, 2020 WL 3865255 (U.S. July 9, 2020). In AMG Capital, a  
5 three-judge panel on the Ninth Circuit was “bound by [its] prior interpretation of § 13(b)” that  
6 authorized district courts to award equitable monetary relief, but stated that the argument Section  
7 13(b) does not authorize non-injunctive relief “had force.”<sup>1</sup> Fed. Trade Comm'n v. AMG Capital  
8 Mgmt., LLC, 910 F.3d 417, 427 (9th Cir. 2018), cert. granted sub nom. AMG Capital Mgmt., LLC  
9 v. F.T.C., No. 19-508, 2020 WL 3865250 (U.S. July 9, 2020). Because the Supreme Court in  
10 AMG Capital and Credit Bureau is poised to address “an issue of enormous consequence to this  
11 case[,] whether § 13(b) of the FTC Act authorizes the FTC to seek monetary relief at all,”  
12 LendingClub contends a stay is warranted. (Dkt. No. 311 at 15.)

13 **I. Legal Framework**

14 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
15 control the disposition of the causes on its docket with economy of time and effort for itself, for  
16 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In deciding whether  
17 to grant a stay, a court may weigh the following: “the possible damage which may result from the  
18 granting of a stay; the hardship or inequity which a party may suffer in being required to go  
19 forward; and the orderly course of justice measured in terms of the simplifying or complicating of  
20 issues, proof, and questions of law which could be expected to result from a stay.” *CMAX, Inc. v.*  
21 *Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-255).

22 A district court's decision to grant or deny a *Landis* stay is a matter of discretion. See  
23 *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).  
24 Under *Landis*, “[a] party seeking a stay need make such a showing [of hardship and inequity] only  
25 if the party opposing the stay first demonstrates that there is a ‘fair possibility’ that a stay will  
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27 <sup>1</sup> Concurring panelists were unequivocal: “[T]he text and structure of [§ 13(b)] unambiguously  
28 foreclose such monetary relief, [and] our invention of this power wrests from Congress its  
authority to create rights and remedies.” *Id.* at 429 (O’Scannlain, J., specially concurring).

1 cause it injury.” *Meras Eng'g, Inc. v. CH2O, Inc.*, No. C-11-0389 EMC, 2013 WL 146341, at \*4  
2 (N.D. Cal. Jan. 14, 2013) (internal quotation and citation omitted); see also *Dependable Highway*,  
3 498 F.3d at 1066 (“[I]f there is even a fair possibility that the stay . . . will work damage to  
4 someone else [] the stay may be inappropriate absent a showing by the moving party of ‘hardship  
5 or inequity.’”) (quoting *Landis*, 299 U.S. at 255.) Fundamentally, “[t]he proponent of a stay has  
6 the burden of proving such a discretionary stay is justified.” *Clinton v. Jones*, 520 U.S. 681, 708  
7 (1997).

8 For the reasons below, the Court finds that LendingClub has met its burden in showing a  
9 stay is justified.

10 **A. Possibility of Injury to Plaintiff**

11 Regarding any potential injury or prejudice the plaintiff may suffer, the FTC argues that  
12 staying this case presents evidentiary concerns: namely that a stay risks the inability of witnesses  
13 to recall specific facts, and that LendingClub may continue to lose or terminate employees  
14 relevant to the action. This argument lacks force. Even taking the FTC’s contention that the risk  
15 of employees’ unavailability is not speculative—given that, for instance, LendingClub’s former  
16 president left the company in May—this alone is insufficient to demonstrate a fair possibility of  
17 harm given that discovery has closed. See *Larson v. Trans Union, LLC*, No. 12-CV-05726-WHO,  
18 2015 WL 3945052, at \*8 (N.D. Cal. June 26, 2015) (holding that where “many key witnesses have  
19 already been deposed [and where] their memories can be refreshed at trial by their deposition  
20 transcripts,” or where unavailable witnesses can have “deposition testimony [] read into the  
21 record” that plaintiff would not be “materially harmed” by a stay). The FTC’s argument that the  
22 length of the stay is prejudicial is further belied by the event that necessitates it: the Supreme  
23 Court’s decision in *AMG Capital and Credit Bureau* is not a “speculative future event involving  
24 multiple contingencies[;]” certiorari has been granted, and “the only event that the [parties] and  
25 the Court are waiting for is the decision itself.” *Robledo v. Randstad US, L.P.*, No. 17-CV-01003-  
26 BLF, 2017 WL 4934205, at \*3 (N.D. Cal. Nov. 1, 2017); see also *Ramirez v. Trans Union, LLC*,  
27 No. 12-CV-00632-JSC, 2015 WL 6159942, at \*2 (N.D. Cal. June 22, 2015) (“The possible  
28 prejudice to Plaintiff that will result from a stay is minimal, as the [relevant] decision will likely

1 be issued within a year per the Supreme Court's customary practice.”)

2 Furthermore, LendingClub has ceased virtually all of the conduct at issue in this case.  
3 (Dkt. No. 311 at 16.) Therefore, the only issue remaining is the FTC’s recovery of restitution, and  
4 “the Ninth Circuit has made clear that monetary recovery cannot serve as the foundation for the  
5 denial of a stay.” Robledo, 2017 WL 4934205, at \*3 (N.D. Cal. Nov. 1, 2017) (citing Lockyer v.  
6 Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005)). LendingClub’s contrary argument that the  
7 issue of monetary relief will not arise unless liability is resolved, and that—even if the Supreme  
8 Court finds that Section 13(b) does not permit the recovery of monetary relief—a decision in AMG  
9 Capital and Capital Bureau will not affect the ability of this Court to determine whether  
10 LendingClub is liable for claims of injunctive relief does not persuasively establish that a stay  
11 pending a decision in these cases would prejudice the FTC.

12 **B. Possible Hardship and Inequity**

13 Even if LendingClub demonstrated a showing of possible injury, the Court finds that  
14 LendingClub has made a showing of hardship and inequity that would be caused by the denial of a  
15 stay. See Meras, 2013 WL 146341, at \*5 (where plaintiffs “made out a fair possibility that they  
16 would be harmed by the stay,” defendants were then required to demonstrate a “clear case of  
17 hardship or inequity that they would suffer absent the stay.”) (internal quotations and citations  
18 omitted).

19 Going forward with trial would needlessly burden LendingClub to put on a trial defense  
20 only to possibly have the entire enterprise mooted by the FTC’s inability to seek any monetary  
21 relief under Section 13(b). The FTC’s citation to Lockyer, 398 F.3d at 1112, for the proposition  
22 that “being required to defend without more” does not sufficiently demonstrate the “hardship or  
23 inequity” that Landis requires is unpersuasive.<sup>2</sup> At stake is not only the mounting of

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25 <sup>2</sup> The cases the FTC cites in support of this proposition are distinguishable as well. See Levin v.  
26 Caviar, Inc., 1146, 1156 (N.D. Cal. 2015) (denying stay because defendant was seeking a stay on  
27 the basis of an issued appellate decision where there was only the possibility of an en banc  
28 hearing, which was “not sufficient grounds on which to defer ruling on [the current] issue”)  
(emphasis added); Pieteron v. Wells Fargo Bank, N.A., No. 17-CV-02306-EDL, 2018 WL  
3241069, at \*5 (N.D. Cal. July 2, 2018) (denying stay because the “expense of further litigation”  
alone does not demonstrate a hardship, “particularly where . . . significant portions of the dispute  
[would] be unaffected by the outcome of the FCC and Ninth Circuit proceeding”) (emphasis

1 LendingClub’s defense, but the viability of the remedy motivating the case. This reveals another  
2 way in which trying this case before the Supreme Court’s decision in AMG Capital and Credit  
3 Bureau would impose a hardship and inequity on LendingClub: exposing LendingClub to the risk  
4 of a monetary judgment when the ability of the FTC to collect such a judgment at all is pending  
5 review—and could be rendered moot by the Supreme Court—is fundamentally inequitable. See  
6 Robledo, 2017 WL 4934205, at \*4 (finding a hardship where defendant would be required to  
7 defend itself and undergo discovery that “could be rendered moot” by Supreme Court decision  
8 reversing circuit precedent). In fact, many cases emphasize the expenditure of party and judicial  
9 resources as grounds for granting a stay. See, e.g., Larroque v. First Advantage Lns Screening  
10 Sols., Inc., No. 15-CV-04684-JSC, 2016 WL 39787, at \*2 (N.D. Cal. Jan. 4, 2016)  
11 (“unnecessar[y] expend[iture]” of “[j]udicial resources” pending the outcome of relevant Supreme  
12 Court decision [Spokeo] supported decision to stay); Ramirez, 2015 WL 6159942, at \*2  
13 (“Defendant faces the risk of unnecessary proceedings and expenses if the case is not stayed.”);  
14 Robledo, 2017 WL 4934205, at \*4 (“Denying the stay at this juncture risks forcing the parties to  
15 expend resources that could have been avoided.”); Larson, 2015 WL 3945052, at \*8 (“[I]f the case  
16 is not stayed, the Court [and] the parties . . . would all face the risk of dedicating substantial  
17 resources to proceedings that may ultimately prove unnecessary.”); Arista Networks, Inc. v. Cisco  
18 Sys. Inc., No. 16-CV-00923-BLF, 2016 WL 4440245, at \*2 (N.D. Cal. Aug. 23, 2016)  
19 (“Recognizing the potential burden for both parties, the Court finds that the potential hardship  
20 from denying the stay weighs slightly in favor of granting it.”).

21 Furthermore, where the question presented before the Supreme Court is “squarely  
22 implicated” in a case, a stay is warranted. See Larson, 2015 WL 3945052, at \*8. While the FTC

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25 added); Dalchau v. Fastaff, LLC, No. 17-CV-01584-WHO, 2018 WL 1709925, at \*5 (N.D. Cal.  
26 Apr. 9, 2018) (“Fastaff essentially points to nothing other than defense of this suit to demonstrate  
27 a hardship or inequity.”); Beijing Tong Ren Tang (USA), Corp. v. TRT USA Corp., No. C-09-  
28 00882 RMW, 2009 WL 5108578, at \*2 (N.D. Cal. Dec. 18, 2009) (“The only hardship or inequity  
that TRT USA alleges would result from denying the stay is that TRT USA would have to  
continue to litigate this proceeding.”); Edwards v. Oportun, Inc., 193 F. Supp. 3d 1096, 1102  
(N.D. Cal. 2016) (denying stay where “issues in [the] case must still be determined regardless of”  
relevant D.C. Circuit ruling at the motion to dismiss stage, and noting that “judicial economy  
[was] not served by granting a stay.”) (emphasis added).

1 observes that several cases LendingClub cites concern dispositive jurisdictional issues, these cases  
2 do not limit the ability of the Court to issue a stay to jurisdictional issues. See, e.g., McElrath v.  
3 Uber Techs., Inc., No. 16-CV-07241-JSC, 2017 WL 1175591, at \*5 (N.D. Cal. Mar. 30, 2017)  
4 (issuing stay and emphasizing the “significant[] impact” relevant Supreme Court decision would  
5 have on instant case); Ramirez, WL 6159942, at \*2 (emphasizing “potential impact” of relevant  
6 Supreme Court case when issuing stay). Given that AMG Capital and Credit Bureau could  
7 categorically foreclose the FTC from claiming any monetary remedy at all under Section 13(b),  
8 these cases are squarely implicated in and strongly support the issuance of a stay.

9 Accordingly, LendingClub has made a showing that it would suffer hardship and inequity  
10 absent the granting of a stay.

11 **C. Orderly Course of Justice**

12 The third Landis factor “considers whether granting a stay will simplify or complicate the  
13 issues before the Court.” Robledo, 2017 WL 4934205, at \*4. Where a Supreme Court decision is  
14 “squarely on point, the orderly course of justice [under Landis] likewise weighs in favor of a  
15 stay.” Larroque, 2016 WL 39787, at \*2. Because the ability of the FTC to recover any monetary  
16 relief under Section 13(b) at all is squarely on point to this case, granting a stay would conserve  
17 judicial resources and promote the orderly course of justice. If the Supreme Court follows the  
18 Seventh Circuit and the concurring Ninth Circuit panelists then the case will be greatly simplified  
19 as no monetary relief will be at issue. Given that the FTC does not claim that LendingClub’s  
20 current practices are deceptive, the elimination of monetary relief will likely facilitate a negotiated  
21 resolution.

22 The complications imposed by the ongoing COVID-19 pandemic further support granting  
23 the motion to stay. It is unlikely that the trial can proceed in person in October; thus, if no stay is  
24 granted the Court will have to wade through the thorny issues of whether it can require a party to  
25 virtually try a case and whether, even if it can, whether it should in light of the amount of money  
26 the FTC seeks. This complication is avoided (or at least potentially avoided) by staying the case  
27 pending issuance of a Supreme Court decision which is squarely relevant to the outcome of this  
28 case.

1 **CONCLUSION**

2 As explained above, all the Landis factors support the issuance of a stay. Accordingly,  
3 LendingClub’s motion to stay all proceedings in this case until the Supreme Court issues its  
4 decision in AMG Capital and Credit Bureau is GRANTED.

5 This disposes of Dkt. No. 311.

6 **IT IS SO ORDERED.**

7 Dated: August 20, 2020

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10 JACQUELINE SCOTT CORLEY  
11 United States Magistrate Judge

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