

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

VIRGIN MOBILE USA, L.P.,)
v.)
Plaintiff,)
PAT APPLE, et al.,) Case No. 17-2524-JAR
Defendants.)

ORDER STAYING DISCOVERY

The parties in this case have informed the court that they believe a stay of discovery is appropriate pending the resolution of defendants' motion to dismiss (ECF No. 22). After reviewing the filings in this case, the court agrees.

The court may stay discovery if: (1) the case is likely to be finally concluded via a dispositive motion; (2) the facts sought through discovery would not affect the resolution of the dispositive motion; or (3) discovery on all issues posed by the complaint would be wasteful and burdensome.¹ The decision whether to stay discovery rests in the sound discretion of the court.² As a practical matter, this calls for a case-by-case determination.³

¹ See *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994) (citing *Kutilek v. Gannon*, 132 F.R.D. 296, 297-98 (D. Kan. 1990)); *Lofland v. City of Shawnee, Kan.*, No. 16-2183, 2016 WL 5109941, at *1 (D. Kan. Sept. 20, 2016).

² *Clinton v. Jones*, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.").

³ *Citizens for Objective Public Educ., Inc. v. Kan. State Bd. of Educ.*, No. 13-4119, 2013 WL 6728323, at *1 (D. Kan. Dec. 19, 2013).

Upon review of the pending dispositive motion and after considering the e-mail submitted by the parties, the court finds that a stay of discovery is warranted until the court rules the dispositive motion. Defendants' motion to dismiss, if granted, would dispose of the entire case. It seeks judgment as a matter of law, and is not dependent on any information that would be gained through discovery. Accordingly, discovery at this point is unnecessary and potentially wasteful.

IT IS HEREBY ORDERED that all pretrial proceedings in this case, including discovery and initial disclosures, are stayed until further order of the court. If defendants' motion to dismiss is denied, then **within five business days** of the decision, plaintiff shall so inform the undersigned and request the issuance of an initial order setting a scheduling conference and related deadlines.

Dated November 21, 2017, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge