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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TAMIE JENSEN,

9 Plaintiff(s),

10 v.

11 CAPITAL ONE FINANCIAL
CORPORATION,

12 Defendant(s).

CASE NO. C24-0727-KKE

ORDER GRANTING DEFENDANT'S
MOTION TO STAY DISCOVERY

13 Plaintiff Tamie Jensen filed this putative class action in May 2024, alleging that “by
14 initiating the transmission of commercial text messages to Washington residents who did not
15 clearly and affirmatively consent in advance to receive the text messages” via its “Refer a Friend”
16 program, Defendant Capital One Financial Corporation (“Capital One”) violated Washington’s
17 Commercial Electronic Mail Act (“CEMA”) and Consumer Protection Act (“CPA”). Dkt. No. 1
18 at 17–20. In August 2024, Capital One filed a motion to dismiss, contending that Jensen’s CEMA
19 claim is preempted and that (in the alternative) Jensen has failed to state a claim for a CEMA or
20 CPA violation, and that even if the Court disagrees with either of those contentions, the class
21 allegations should be stricken from the complaint. Dkt. No. 15.

22 While the motion to dismiss was pending, Capital One also filed a motion to stay discovery
23 until the motion to dismiss is resolved. Dkt. No. 25. According to Capital One, requiring it to
24 respond to discovery requests while a potentially dispositive or case-narrowing motion is pending

1 would be needlessly expensive and wasteful. *Id.* at 7–10. Jensen opposes the motion, noting that
2 discovery stays pending a motion to dismiss are the exception, not the rule, and that Capital One
3 is not necessarily likely to prevail on its motion to dismiss. Dkt. No. 27. At oral argument, Jensen
4 acknowledged that no harm would result from a brief stay of discovery, but nonetheless asked the
5 Court to review her forthcoming opposition brief to assure itself that her complaint could withstand
6 Capital One’s motion to dismiss.

7 Courts may enter protective orders to limit or prohibit discovery for good cause. *See Fed.*
8 *R. Civ. P. 26(c)*. Good cause for a protective order can include the filing of a dispositive motion,
9 although that situation does not automatically require a discovery stay. *See Morien v. Munich*
10 *Reinsurance Am., Inc.*, 270 F.R.D. 65, 66–67 (D. Conn. 2010). When determining whether to stay
11 discovery while a dispositive motion is pending, courts consider whether the defendant has “made
12 a strong showing that the plaintiff’s claim is unmeritorious; the breadth of discovery and the burden
13 of responding to it; and the risk of unfair prejudice to the party opposing the stay.” *Id.* at 67.

14 As to the first consideration, the Court has reviewed Capital One’s motion as well as
15 Jensen’s opposition brief, which reveal that the issues in the motion are fully and vigorously
16 contested, although Capital One has presented multiple potential grounds for dismissing or
17 narrowing the claims raised in the complaint. As to the second consideration, Capital One has
18 explained how discovery in this case will be particularly challenging and expensive, given that
19 Jensen contends that the putative class includes tens of thousands or more people. *See Dkt. No.*
20 *25* at 8–9 (referencing *Dkt. No. 1* ¶ 44). And as to the third consideration, no harm will result from
21 a brief stay.

22 On balance, the Court finds that the circumstances here warrant an exercise of discretion
23 to stay discovery until the pending motion to dismiss is resolved. *See Chavous v. Dist. of Columbia*
24 *Fin. Resp. & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001) (“A stay of discovery pending

1 the determination of a dispositive motion ‘is an eminently logical means to prevent wasting the
2 time and effort of all concerned, and to make the most efficient use of judicial resources.’” (quoting
3 *Coastal States Gas Corp. v. Dep’t of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979))).

4 Accordingly, the Court therefore GRANTS Defendant’s motion. Dkt. No. 25.

5 Dated this 23rd day of October, 2024.

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8 Kimberly K. Evanson
9 United States District Judge
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