

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**In re: Clearview AI, Inc.
Consumer Privacy Litigation**

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**No. 21 C 135
Magistrate Judge
Maria Valdez**

ORDER

This matter is before the Court on (1) Defendant Macy’s Retail Holdings, Inc.’s Motion for a Stay of Discovery Pending Resolution of Its Motion to Dismiss [Doc. No. 143], and (2) Plaintiffs’ Motion to Compel Defendant Macy’s, Inc. to Provide Rule 26(a)(1) Disclosures and Discovery Responses [Doc. No. 139]. For the reasons that follow, Macy’s motion to stay is granted and Plaintiffs’ motion to compel is denied.

BACKGROUND

Macy’s is one of several Defendants in this consolidated multidistrict litigation arising out of Plaintiffs’ allegations that Defendants unlawfully collected and used Plaintiffs’ sensitive biometric data. Plaintiffs allege that Defendant Clearview AI, Inc. collected their biometric information from the internet and compiled a “biometric database.” Plaintiffs further allege that Macy’s used Clearview’s database in order to identify individuals in Macy’s retail stores. Based on these allegations, Plaintiffs have asserted a claim against Macy’s under the

Illinois Biometric Information Privacy Act, along with various statutory and common law claims under Illinois, California, and New York law. Pertinent to the instant discovery motions, Macy's previously filed a motion to dismiss in which it argues that Plaintiffs' claims against it are subject to dismissal because Plaintiffs lack Article III standing. According to Macy's, Plaintiffs cannot show that Macy's actions caused them an injury-in-fact. In its instant motion, Macy's contends that the pending motion to dismiss warrants a stay of discovery. On the flipside of the coin, Plaintiffs have moved to compel Macy's to provide Rule 26(a)(1) disclosures and responses to Plaintiffs' outstanding discovery requests.

DISCUSSION

It is well-settled that “[t]he mere filing of [a] motion [to dismiss] does not automatically stay discovery.” *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 331, 336-37 (N.D. Ill. 2005) (citation omitted). However, “[s]tays are often deemed appropriate where the motion to dismiss can resolve the case – at least as to the moving party, or where the issue is a threshold one, such as jurisdiction, standing, or qualified immunity.” *Id.* (citations omitted). The latter situation is the case here, as Macy's has argued in its motion to dismiss that Plaintiffs lack standing to bring any of their claims against it. In light of that potentially-dispositive standing argument, the Court finds that a temporary stay of discovery as to Macy's is warranted. *See Aguilar v. Natbony*, No. 11 C 6286, 2011 U.S. Dist. LEXIS 128383, at *3 (N.D. Ill. Nov. 4, 2011) (“Although the filing of a motion to dismiss does not automatically stay discovery, a stay may be appropriate where the motion to

dismiss is case-dispositive or relates to a threshold issue, such as jurisdiction or standing.”) (citation omitted); *Niederhoffer Intermarket Fund, L.P. v. Chi. Mercantile Exch.*, No. 99 C 3233, 199 U.S. Dist. LEXIS 14305, at *2 (N.D. Ill. Aug. 30, 1999) (“A stay of discovery may be appropriate when one party raises a potentially dispositive threshold issue such as a challenge to a plaintiff’s standing.”) (citations omitted). Furthermore, Macy’s points out that Plaintiffs’ theory putting Macy’s in a central role as representative class defendant would, if the motion to stay is not granted, expose Macy’s to extensive discovery. If Macy’s prevails on the motion to dismiss, such discovery would be unnecessary.

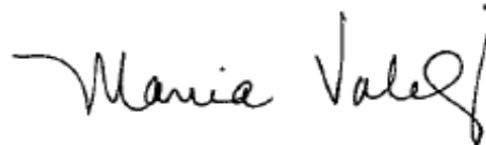
Given the issues raised in Macy’s motion to dismiss, a small delay in discovery while awaiting adjudication of the motion is reasonable. Accordingly, the Court hereby stays discovery as to Macy’s pending the resolution of Macy’s motion to dismiss. The Court finds that this temporary stay of discovery will not unduly prejudice any party and has the potential to streamline the issues and reduce the burden of litigation on the parties and the Court. *See Sadler v. Retail Props. of Am., Inc.*, No. 12 C 5882, 2013 WL 12333447, at *1 (N.D. Ill. Sept. 27, 2013).

CONCLUSION

For the foregoing reasons, Defendant Macy's Motion for a Stay of Discovery [Doc. No. 143] is granted and Plaintiffs' Motion to Compel [Doc. No. 139] is denied.

SO ORDERED.

ENTERED:

A handwritten signature in black ink that reads "Maria Valdez". The signature is written in a cursive, flowing style.

DATE: August 31, 2021

HON. MARIA VALDEZ
United States Magistrate Judge