UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEVIN JOHNSON,

Plaintiff,

v.

HARRIS & HARRIS, LTD.,

Defendant.

No. 20-cv-1261 (DLF)

ORDER

Kevin Johnson filed this action against Harris & Harris, Ltd. ("Harris") on May 13, 2020. Dkt. 1. Before the Court is Harris's Motion to Stay Proceedings, Dkt. 45, which seeks to stay this action pending the Supreme Court's ruling in *Facebook, Inc. v. Duguid*, No. 19-511. For the reasons that follow, the Court will grant the motion.

In his Second Amended Complaint, Johnson alleges, among other things, that Harris violated the Telephone Consumer Protection Act ("TCPA") by "repeatedly calling Johnson's cellular telephone without consent using an automatic telephone dialing system." Second Am. Compl. ¶ 62, Dkt. 37. On July 9, 2020, the Supreme Court granted certiorari in *Facebook* to resolve whether an automatic telephone dialing system, as defined by the TCPA, "encompasses any device that can 'store' and 'automatically dial' telephone numbers, even if the device does not 'use a random or sequential number generator.'" *Facebook, Inc. v. Duguid*, 2020 WL 3865252 (2020) (granting the writ).

"A trial court has broad discretion to stay all proceedings in an action pending the resolution of independent proceedings elsewhere." *Hisler v. Gallaudet Univ.*, 344 F. Supp. 2d 29, 35 (D.D.C. 2004) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). After all, "the

power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis*, 299 U.S. at 254. In determining whether to stay a case, the Court must "'weigh competing interests and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties." *Belize Social Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 733 (D.C. Cir. 2012) (quoting *Landis*, 299 U.S. at 254–55). "In order to prevail in a motion to stay, the proponent of a stay bears the burden of establishing its need." *United States v. Honeywell International, Inc.*, 20 F. Supp. 3d 129, 132 (D.D.C. 2013) (internal quotation marks and alteration omitted). A "stay of the proceedings is justifiable when it would settle some outstanding issues and simplify others." *Id.* (internal quotation marks and alterations omitted).

As noted, Johnson alleges that Harris unlawfully used an automatic telephone dialing system to call his cell phone without his consent. Second Am. Compl. ¶¶ 62, 67. Therefore, "the outcome in *Facebook* has the potential to significantly narrow the issues in this case." *Canady v. Bridgecrest Acceptance Corp.*, No. 19-cv-04738, 2020 WL 5249263, at *4 (D. Ariz. Sept. 3, 2020). To be sure, as Johnson observes, the Supreme Court's ruling in *Facebook* will not affect his other TCPA claim—which is premised on calls made using an artificial or prerecorded voice—or his claims under the Fair Debt Collection Practices Act and the District of Columbia Debt Collection Law. *See* Pl.'s Opp'n at 4, Dkt. 46-1. But even though the Supreme Court's decision in *Facebook* "may not settle every question of fact and law" in this action, *Landis*, 299 U.S. at 256, it will "settle some outstanding issues and simplify others," *Honeywell*, 20 F. Supp. 3d at 132 (internal quotation marks omitted); *see also Frey v. Frontier Utilities Northeast LLC*, No 19-cv-2372, 2021 WL 322818, at *2 (E.D. Pa. Feb. 1, 2021) ("[E]ven if the

Supreme Court's ruling [in *Facebook*] is not dispositive of this case, it will clarify the meaning of ATDS, and by extension, the scope of liability under the TCPA."). For instance, the Supreme Court's ruling in *Facebook* is likely to shape the contours of the parties' outstanding discovery disputes, *see* Pl.'s Post-Discovery Status Report, Dkt. 53, and impact multiple pending motions in this action, *see, e.g.*, Pl.'s Mot. for Judicial Notice (asking the Court to take judicial notice of various records related to Harris's telephone system), Dkt. 19; Pl.'s Supplemental Mot. for Judicial Notice (same), Dkt. 43. Accordingly, as other courts have concluded, issuing a stay pending the Supreme Court's decision in *Facebook* furthers the interest of judicial economy by "avoid[ing] exhausting judicial resources to decide things… which may prove fruitless." *Canady*, 2020 WL 5249263, at *3 (internal quotation marks omitted); *see also Wilson v. Rater8, LLC*, No. 20-cv-1515, 2021 WL 347306, at *2 (S.D. Cal. Feb. 2, 2021) ("Allowing this case to proceed pending a decision in [*Facebook*] could be wasteful and result in duplicative proceedings.").

Moreover, the Court finds that staying this action presents little risk of imposing hardship on Johnson. Johnson contends that a stay would "hinder, not advance, the timely adjudication of this matter." Pl.'s Opp'n at 1. But the Supreme Court held oral argument in *Facebook* in December, "suggesting that the stay will not be in effect for more than a few months," *Frey*, 2021 WL 322818, at *3. And given that the requested stay is both definite and limited in duration, the Court is not persuaded that this stay would give Harris "an impermissible tactical advantage," *see* Pl.'s Opp'n at 6, as Johnson has not explained what hardship this stay would impose beyond "an additional few months' delay," *Frey*, 2021 WL 322818, at *2.

Johnson also asks the Court to deny the motion on the grounds that Harris failed to comply with Local Civil Rule 7(m). Pl.'s Opp'n at 8. That rule mandates that "[b]efore filing

any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement." LCvR 7(m). However, the Court retains discretion to excuse noncompliance with Rule 7(m), especially when "the parties would have proceeded with the exact same disputes regardless of efforts to comply with the rule." *United States ex rel. Purcell v. MWI Corp.*, 824 F. Supp. 2d 12, 19 n.3 (D.D.C. 2011). Here, there is no indication that this dispute would have been avoided had Harris complied with its meet-and-confer obligations. The Court "does not take Local Rule 7(m) lightly," *D'Onofrio v. SFX Sports Grp., Inc.*, 247 F.R.D. 43, 45 n.2 (D.D.C. 2008), but forcing Harris to refile this motion would simply "waste the parties' and the Court's time and delay the resolution of a relatively straightforward motion," *Kriebel v. Life Ins. Co. of N. Am.*, No. 15-cv-151, 2015 WL 11347968, at *3 (D.D.C. Oct. 14, 2015). Accordingly, it is

ORDERED that this case is **STAYED** pending the Supreme Court's ruling in *Facebook, Inc. v. Duguid*. It is further

ORDERED that the parties shall file a joint status report, within 14 days of the Supreme Court's ruling in *Facebook, Inc. v. Duguid*, that proposes a schedule for further proceedings.

Dabney L. Friedrich

DABNEY L. FRIEDRICH
United States District Judge

February 22, 2021