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Subject: Activity in Case 1:22-md-03044-NGG-MMH In Re: Exactech Polyethylene Orthopedic Products Liability Litigation
Order on Motion to Stay
Date: Tuesday, May 30, 2023 7:40:55 PM

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U.S. District Court

Eastern District of New York

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Case Name: In Re: Exactech Polyethylene Orthopedic Products Liability Litigation

Case Number: [1:22-md-03044-NGG-MMH](#)

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Docket Text:

ORDER granting Motion to Stay Discovery [267]: The request from Defendants TPG Inc.; Osteon Holdings, Inc.; Osteon Merger Sub, Inc.; and Osteon Intermediate Holdings II, Inc. (collectively, "TPG" or "TPG Defendants") to stay discovery as to the TPG Defendants pending resolution of their motion to dismiss the Amended Master Personal Injury Complaint is granted. Federal Rule of Civil Procedure 26(c) provides courts with the discretion to stay discovery "for good cause." Fed. R. Civ. P. 26(c). In evaluating whether a stay of discovery is appropriate, courts consider "1) whether a defendant has made a strong showing that the plaintiff's claim is unmeritorious, 2) the breadth of discovery and the burden of responding to it, and 3) the risk of unfair prejudice to the party opposing the stay." *Batalla Vidal v. Duke*, No. 16-CV-4756 (NGG) (JO), 2017 WL 4737280, at *3 (E.D.N.Y. Oct. 19, 2017) (cleaned up). Here, the TPG Defendants have demonstrated that (1) they have substantial arguments for dismissal that are "potentially dispositive, and appears to be not unfounded in the law" *Negrete v. Citibank, N.A.*, No. 15-CV-7250 (RWS), 2015 WL 8207466, at *1 (S.D.N.Y. Dec. 7, 2015) (citation omitted); (2) the burden of responding to discovery would be considerable given the breadth of Plaintiffs' requests; and (3) there would be no prejudice to Plaintiffs, who will receive discovery from the Exactech Defendants. Further, delay alone does not constitute undue prejudice. *O'Sullivan v. Deutsche Bank AG*, No. 17-CV-8709 (LTS)(GWG), 2018 WL 1989585, at *9 (S.D.N.Y. Apr. 26, 2018) ("[T]he passage of a reasonable amount

of time, without any other form of attendant prejudice, cannot itself constitute prejudice sufficient to defeat a motion to stay discovery.") Accordingly, discovery is stayed as to the TPG Defendants pending resolution of their anticipated motion to dismiss the Amended Master Personal Injury Complaint. So Ordered by Magistrate Judge Marcia M. Henry on 05/30/2023. (JD)

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