

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

To: Counsel of Record & Unrepresented Defendants & Relief Defendants

From: Judge Peter J. Messitte

Re: Federal Trade Commission v. Ecological Fox, LLC et al.
Civil No. PJM 18-3309 *SEALED*

Date: January 9, 2019

All parties should be aware of the current Federal Government shutdown. The FTC has filed a Motion for a Stay of Briefing in Light of United States Government Cessation (ECF-91), noting that FTC attorneys are prohibited from working “except for emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

All things considered, the Court believes this is not a case where the Court can force the Government to go forward with its full briefing schedule as previously established. In the Court’s view, the “protection of property” in this case is not, with a few possible exceptions noted below, sufficiently urgent or unique. However, the briefing schedule ultimately relates to the hearing on all motions set for February 1 and the hearing on the FTC’s Motion for Preliminary Injunction set for the week beginning February 11. In fairness, except as noted below, the Court feels those hearings should not go forward as scheduled. Therefore, except as noted below, the Court will extend the hearing dates and all associated briefing deadlines by 30 days. **If the Government remains shut down on February 1, 2019, the stay will automatically renew for at least 30 days thereafter, i.e., until April 1, 2019 (the 30th day being a Saturday). However, any future hearing dates (e.g., April 1 and April 11) will need to be confirmed by the Court at the time of any such renewal. For now, the new hearing dates will be March 1 for all outstanding motions—including contempt motions—except as noted below, and the week of March 11 for the hearing on the Preliminary Injunction. Although AIBL objects to the extension of the Preliminary Injunction hearing to the week beginning March 11, given the extensions to the briefing schedule, the Court cannot fairly go forward with the February 11 hearing date.**

The exceptions are as follows:

1. The telephonic hearing on the FTC’s Motion to Compel and AIBL’s Motion for a Stay went forward as scheduled on January 8 at 3:00 pm;
2. AIBL’s Motion to Dismiss will still be heard on February 1. **The FTC will have until noon on January 22, 2019 to file its Response to AIBL’s Motion to Dismiss; AIBL shall file**

its Reply by noon on January 31, 2019. The Court will also hear argument on the FTC's Motion to Ensure Public Access on February 1. The FTC and AIBL will confer prior to that time and agree to the release of such portions of the record that they can agree upon. No other motions will be heard on February 1.

- 3. Each named individual party, and only individual parties, will be authorized to have access to up to \$3,000 of their presently frozen assets every 30 days, beginning February 1, 2019. A separate Order authorizing such access and the conditions attached thereto is being entered contemporaneously herewith.**
- 4. The FTC, in its Motion for a Stay, did not ask for, nor did the Court specifically address, the issue of extensions to pending discovery deadlines. The Court understands from the FTC that several parties have not fully responded to the FTC's discovery requests. Except as will be noted, outstanding discovery requests are not subject to extension and shall be complied with without delay. The Court has granted Defendant AIBL's Motion to Stay Discovery with respect to certain named AIBL employees and experts and as to all but two third parties, regarding their interactions with AIBL. Otherwise, third parties may be deposed immediately on all other matters. Please consult the Court's Order on that Motion, dated January 8, 2018, for specifics.**

IN ANY EVENT, PLEASE TAKE NOTE: Where, as here, jurisdictional facts as to AIBL appear to be "intertwined with the merits" of the action, case law suggests that it is "preferable that this determination be made at trial, where a plaintiff may present his case in a coherent, orderly fashion, and without the risk of prejudicing his case on the merits." *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.2 (9th Cir. 1977). This is so even though the Court will hold a hearing on its Motion to Dismiss on February 1.

All or part of the foregoing may be subject to modification depending on the status of government operations.

Despite the informal nature of this ruling, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.

/s/

Peter J. Messitte
United States District Judge

cc: Court File