

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:14-cv-00815-BCW
)	
BF LABS INC., <i>et al.</i> ,)	
)	
Defendants.)	

**SUGGESTIONS IN SUPPORT OF EMERGENCY MOTION FOR RELIEF
FROM STAY TO PERMIT COMPLIANCE WITH AN ORDER ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS**

COME NOW Kyle Alexander and Dylan Symington (the “class representatives”), on behalf of themselves and all those similarly situated (the “customer class” or “consumers”), by and through their attorneys of record, and respectfully offer these suggestions in support of their emergency motion for relief from the stay provisions of this Court’s October 2, 2014 order to permit the class representatives to comply with an order issued by the United States District Court for the District of Kansas.

I. REQUEST FOR EMERGENCY CONSIDERATION OF THIS MOTION

Pursuant to Rule 6(c)(1)(C), the class representatives respectfully request this Court to grant emergency consideration of this Motion because the class representatives have been ordered by the United States District Court for the District of Kansas to take actions in *Alexander v. BF Labs, Inc.*, Case No. 14-CV-2159-KHV-JPO by Tuesday, October 7, 2014.

Approximately one hour after this Court concluded its telephone hearing on the class representatives’ motion to intervene, the Receiver filed a “Notice of Appointment of Temporary Receiver and Motion to Stay” in the Kansas Court. The filing informed the

Kansas Court of the Receiver's appointment and asked the Kansas Court to enter a stay of the *Alexander* action because "[t]he District of Kansas should enforce the stay ordered by the Western District of Missouri under principles of judicial economy and comity." (See Receiver's Notice and Motion to Stay, **Exhibit 1**).

One hour after the Receiver's filing, the Kansas Court ordered expedited briefing, requiring the class representatives to respond to the motion by Tuesday, October 7, 2014. (See Order, USDC-KS Doc. 54, **Exhibit 2**).

II. RELIEF FROM THIS COURT'S STAY IS REQUIRED FOR THE CLASS MEMBERS TO COMPLY WITH THE KANSAS COURT'S ORDER

On September 18, 2014, this Court entered an *ex parte* temporary restraining order ("TRO"), which, among other things, temporarily enjoins BFL and other individuals, freezes assets, and appoints a receiver. The TRO also stated "[e]xcept by leave of this Court, . . . Defendants and all other persons and entities . . . are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendant . . . including, but not limited to . . . [c]ommencing, prosecuting, continuing, entering, or enforcing any suit or proceeding." (See Ex Parte Order, Doc. 9 at 26). The TRO also goes on to prohibit "[d]oing any act or thing whatsoever . . . to interfere with the Temporary Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants." (*Id.*). On September 30, 2014, this Court extended the TRO until October 3, 2014. (See Doc. 47).

Yesterday, October 2, 2014, this Court entered a "Stipulated Interim Order" which states the FTC, Defendants BF Labs, Inc., Darla Drake, and Sonny Vleisides have "stipulated and agreed to entry" of the order, which contains the same stay and

prohibitory language as the TRO and states it shall only “expire upon further order of the Court.” (See Doc. 54 at 26, 34). The Receiver has taken the position in his filing before the Kansas Court “[t]he pending action against [BF Labs Inc.] . . . in [the Kansas Court] . . . is covered by the court-ordered stay.” (See Receiver’s Notice and Motion to Stay, pp. 1-2, **Exhibit 1**).

The class representatives intend to file an opposition and response to the motion to stay pending before the U.S. District Court for the District of Kansas, which may allege, and seek relief based upon, one or more of the following grounds: (1) upon the filing of the class representatives’ Complaint on April 4, 2014, the U.S. District Court for the District of Kansas acquired original exclusive jurisdiction under 28 U.S.C. § 1332(a) and (d) over the claims, parties, and assets this Court’s Stipulated Interim Order encompasses; (2) the documents encompassed by this Court’s Stipulated Interim Order were already subject to prior discovery orders entered on June 25, 2014 and July 10, 2014 by the U.S. District Court for the District of Kansas; (3) this Court’s authority does not enjoin or oust the original exclusive jurisdiction or orders of the U.S. District Court for the District of Kansas; (4) the U.S. District Court for the District of Kansas, pursuant to the All Writs Act, 28 U.S.C. § 1651, has the authority to enjoin any disposition of claims or assets or conduct by any person or entity that interferes or threatens to interfere with its original exclusive jurisdiction; and (5) the doctrine of “comity” weighs in favor of the U.S. District Court for the District of Kansas maintaining continued jurisdiction under the “first to file” rule. See *Orthmann v. Apple River Campground, Inc.*, 765 F.2d 119, 121 (8th Cir. 1985) (“[C]ourts follow a ‘first to file’ rule that where two courts have concurrent jurisdiction, the first court in which jurisdiction attaches has

priority to consider the case.”), citing *Hospah Coal Co. v. Chaco Energy Co.*, 673 F.2d 1161, 1163 (10th Cir.), *cert. denied*, 456 U.S. 1007 (1982).

The stay language in this Court’s October 2, 2014 Stipulated Interim Order is both broad enough and vague enough that it could be interpreted as precluding the class representatives from filing their merits opposition and requesting related relief regarding the motion pending in the U.S. District Court for the District of Kansas. As a violation of this Court’s Order could subject the class representatives and their counsel to contempt of court, the class representatives seek this relief from the stay provisions of the Court’s October 2, 2014 order to avoid any possibility their actions before the Kansas Court could be in violation of this Court’s Order.

WHEREFORE, for the foregoing reasons, the class representatives respectfully request this Court to grant their motion for relief from the stay provisions of this Court’s October 2, 2014 order to permit the class representatives to comply with an order issued by the United States District Court for the District of Kansas, and any other relief the Court deems just and proper under the circumstances.

Date: October 3, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2014, I served the foregoing to all counsel of record by electronically filing the foregoing document using CM/ECF:

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