

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BELVIA, *et al.*,

Defendants.

Civil Action No. 20-cv-284

Judge Schwab

FILED UNDER SEAL

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION FOR AN ORDER
TO EXTEND TEMPORARY RESTRAINING ORDER, CONTINUE HEARING,
MODIFY BRIEFING SCHEDULE, AND REDUCE BOND**

I, Brian Samuel Malkin, hereby declare as follows:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am one of the attorneys working for Ference & Associates LLC ("the Ference Firm" or "Plaintiff's Counsel"), legal counsel for Plaintiff. I make this declaration in support of Plaintiff's *Ex Parte* Motion for an Order to Extend the Temporary Restraining Order, Continue the Hearing, and Modify the Briefing Schedule.

3. On February 26, 2020, this Court entered a Sealed Order ("Order") (doc. no. 11) granting 1) a temporary restraining order and 2) an order restraining assets and Merchant Storefronts against all of the Defendants, Amazon.com, Inc., and its related companies and

affiliates, including Amazon Services, LLC, and Amazon Payments, Inc. (collectively “Amazon”).

4. The same day the Order was entered, 1) I made arrangements for the Order to be served by hand delivery upon Amazon’s registered agent in Washington State, and 2) I emailed the Order to counsel for Amazon. Amazon’s lawyers then confirmed by e-mail that Defendants assets would be restrained within five (5) business days, that is, no later than March 4, 2020.

5. It is imperative that the Defendants’ assets be restrained prior to Defendants having notice of this lawsuit, for example through being served or being able to find the lawsuit on the Court’s ECF system. Should Defendants become aware of this lawsuit before their assets are restrained, the Defendants will transfer their assets outside of the Court’s jurisdiction. Under the Court’s current scheduling order, however, Plaintiff is required to serve Defendants before noon on February 27, 2020, which is before Amazon will have restrained Defendants’ assets.

6. I have been counsel in numerous cases involving sellers on the Amazon.com marketplace in the past two years. Amazon has never restrained the defendants’ accounts within twenty four (24) hours of receiving a Temporary Restraining Order. The longest it has taken Amazon to restrain the defendants’ accounts is twenty two (22) days after receipt of the Temporary Restraining Order. *Doggie Dental, Inc. v. Ahui*, No. 19-cv-1627 (Hornak, C.J.) (Amazon received TRO December 26, 2019, and confirmed defendants’ accounts were restrained on January 17, 2020; the TRO was twice extended and was in place for a total of forty-seven (47) days).

7. Despite being served with the February 26, 2020, Order the same date the Order was issued, Amazon has not confirmed compliance with Order; thus, Amazon has not

yet reported that the Defendants' assets were located and frozen and has not yet provided Plaintiff's counsel with e-mail contact information to accomplish alternative service upon the Defendants.

8. In my experience, because Amazon has not yet complied with the Court's February 26, 2020, Order, serving any of the Defendants before Amazon's compliance risks the Defendants being able to secret their funds and to alert other Defendants to do the same before the asset freeze is completed. Thus, in order to prevent the Defendants from escaping the effects of the Court's Order, it is necessary to wait for Amazon to confirm the asset freeze before serving any of the Defendants in this case.

9. I declare under the penalty of perjury laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed this 27th day of February 2020, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin