

AQUAPAW LLC,

Plaintiff,

Civil Action No. 20-1954

v.

ALLNICE, *et al.*,

Defendants.

FILED UNDER SEAL

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR AN ORDER
TO EXTEND THE TEMPORARY RESTRAINING ORDER, CONTINUE THE SHOW
CAUSE HEARING, AND MODIFY THE BRIEFING SCHEDULE**

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 Show Cause Hearing, and Modify the Briefing Schedule.

3. On December 16, 2020, this Court entered a Sealed Order (“Order”) granting 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts

(as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against all of the Defendants identified on **Schedule “A”** attached to the Complaint, Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon.com, Inc., and its affiliate, Amazon Services LLC d/b/a Amazon.com (“Amazon”), eBay, Inc. d/b/a eBay.com (“eBay”), and Context Logic, Inc d/b/a wish.com (“Wish”) (“Third Party Service Provider(s)”) and AliPay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a pay.amazon.com, and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institution(s)”) (the “Order”).

4. On December 17, 2020 (the same day the Order was received), the Order was served upon all Third Party Service Providers and it was served upon all the Financial Institutions except PayPal. PayPal requires information from eBay before it can process the “Order” and search accounts apply the restraints.

5. To date, only one of the Financial Institutions has confirmed that restraints have been placed.

6. Based upon these various third party delays in processing the Order (likely due to the holidays), it will not be possible for Plaintiff’s counsel to confirm third party compliance with the Order and serve the Defendants in accordance with the Order before the Defendants are required to respond to the show cause hearing.

7. The Order provides that each of the Financial Institutions and Third Party Service Providers is to locate and freeze the Defendants’ Assets and to provide the Plaintiff’s counsel with the contact information necessary to serve the Defendants.

8. In my experience, since all of the Financial Institutions have not yet complied with the Order, serving any of the Defendants before that 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.

9. Thus, in order to prevent the Defendants from escaping the effects of the Court's Order, it is necessary to wait for all of the Financial Institutions to confirm the asset freeze under before serving any of the Defendants in this case.

10. Additionally, Plaintiff's counsel will need to receive the Defendants' contact information from the Financial Institutions in order to serve the Defendants in compliance with the Alternative Service Order.

11. It would appear that an extension of 2 weeks would likely allow the various parties to comply with the Order such that there is sufficient notice and opportunity for the Defendants.

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 December 28, 2020 at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin