

EXHIBIT D

Jeanette T. Barzelay

From: Brian Brosnahan
Sent: Tuesday, August 28, 2012 2:17 PM
To: 'Lux, James'; 'Fleming, Joel'
Cc: 'Shapiro, Jonathan'; 'Perla, Timothy'; 'Robinson, Andrea'; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino
Subject: RE: Your Ex Parte Application

Jim,

Nothing in the Local Rules, Judge Selna's rules, or his order regarding page limits precludes the filing of objections to evidence or includes objections to evidence within any page limits applicable to briefs.

Judge Selna's Initial Order Following Filing of Complaint Assigned to Judge Selna states (in Part D) that "Ex Parte applications are solely for extraordinary relief and should be used with discretion." There is nothing extraordinary about your motion to strike, and we see no reason why it needs to be heard before September 10. Please advise us why you believe your motion needs to be resolved on an ex parte basis.

Brian

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From: Lux, James [mailto:James.Lux@wilmerhale.com]
Sent: Tuesday, August 28, 2012 2:04 PM
To: Brian Brosnahan; Fleming, Joel
Cc: Shapiro, Jonathan; Perla, Timothy; Robinson, Andrea; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino
Subject: RE: Your Ex Parte Application

Brian,

I tried calling to discuss your proposal. We don't see the rule you are referring to, and in any event, Plaintiffs helped themselves to an additional 170 pages of briefing without seeking our assent and without leave of court, so it doesn't seem right to suggest that your filing is not subject to judicial review before the hearing.

Is there some rule we're missing? If so, please advise, and if not we will plan on filing on an ex parte basis as Joel described.

Jim

From: Brian Brosnahan [mailto:BBrosnahan@kasowitz.com]
Sent: Tuesday, August 28, 2012 3:41 PM

To: Fleming, Joel

Cc: Shapiro, Jonathan; Perla, Timothy; Lux, James; Robinson, Andrea; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino

Subject: Your Ex Parte Application

Joel,

Having consulted the pertinent rules and Judge Selna's General Order, we do not believe that the relief you describe can be obtained via an ex parte application. We would be happy to discuss a stipulation for an order shortening time so that you can file a motion to strike to be heard on September 10, 2012.

Please advise.

Brian

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