

**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.	)	

**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 move this Court 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. Suggestions in Support of this Motion are filed herewith.

Date: October 3, 2014

Respectfully submitted,

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By /s/ Noah K. Wood

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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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*/s/ Noah K. Wood*  
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**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
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FEDERAL TRADE COMMISSION,	)	
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Plaintiff,	)	
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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

Federal Trade Commission v. BF Labs Inc., et al.

*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*

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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 (8<sup>th</sup> 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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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

<b>KYLE ALEXANDER, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2:14-cv-02159-KHV-JPO</b>
	)	
<b>BF LABS, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF APPOINTMENT OF TEMPORARY RECEIVER AND MOTION TO STAY**

COMES NOW Eric L. Johnson, temporary receiver for Defendant BF Labs Inc., and notifies the Court of his appointment as temporary receiver and moves for a stay of this action. On September 18, 2014, in the matter styled Federal Trade Commission v. BF Labs Inc., et al., Case No. 4:14-cv-00815-BCW (the “Receivership Case”), the United States District Court for the Western District of Missouri appointed Eric L. Johnson (the “Temporary Receiver”) as the Temporary Receiver for BF Labs Inc. (“Receivership Entity”) and entered a temporary restraining order pursuant to an Ex Parte Order (the “Appointment Order”). A true and correct copy of the Appointment Order, excluding voluminous exhibits, is attached hereto as **Exhibit 1**. On September 29, 2014, the Western District of Missouri extended the temporary restraining order until October 2, 2014. Receivership Case, Doc. 47, **Exhibit 2** hereto. On October 3, 2014, the Western District of Missouri entered a Stipulated Interim Order. Receivership Case, Doc. 54, **Exhibit 3** hereto.

Section XVII of the Stipulated Interim Order stayed all persons from taking any action to establish or enforce any claim, right, or interest against the Receivership Entity, including the continued prosecution of any suit against the Receivership Entity. Exh. 3 at 26. The pending action against the Receivership Entity in this Court, Kyle Alexander et al. v. BF Labs Inc., is



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covered by the court-ordered stay. The District of Kansas should enforce the stay ordered by the Western District of Missouri under principles of judicial economy and comity.

WHEREFORE Temporary Receiver moves that this Court enter a stay of this action until the Western District of Missouri lifts the stay imposed in the Receivership Case, and for such other and further relief the Court deems just and necessary.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3rd day of October 2014, a true and correct copy of the foregoing was filed electronically with the United States District Court for the District of Kansas using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

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## Activity in Case 2:14-cv-02159-KHV-JPO Alexander et al v. BF Labs Inc. Expediting Briefing Deadline

KSD\_CMECF@ksd.uscourts.gov <KSD\_CMECF@ksd.uscourts.gov>  
To: ksd\_nef@ksd.uscourts.gov

Fri, Oct 3, 2014 at 2:39 PM

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U.S. District Court  
DISTRICT OF KANSAS

### Notice of Electronic Filing

The following transaction was entered on 10/3/2014 at 2:39 PM CDT and filed on 10/3/2014

**Case Name:** Alexander et al v. BF Labs Inc.

**Case Number:** 2:14-cv-02159-KHV-JPO

**Filer:**

**Document Number:** 54(No document attached)

**Docket Text:**

**ORDER expediting the deadline for plaintiff to respond to defendant re motion to stay case [53]. Response deadline 10/7/2014. Reply deadline 10/9/2014. Signed by Magistrate Judge James P. O'Hara on 10/03/2014. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.)(mb)**

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