ATTACHMENT A

From: Madden, Gregory
To: "Andrew Gordon"
Cc: Luis Rafael Rivera; michael; Whichi Rivera; Schaefer, Michelle; sb@sbsmnlaw.com
Subject: RE: 26(f) Conference-FTC v. F9, et al.
Date: Wednesday, April 17, 2019 1:38:00 PM

Messrs. Gordon, Raff, Betances, and Rivera –

Because this is a dispute under Rule 26, you are obligated to meet and confer before filing any such motion with the Court. Local Rule 26(b); *Civil Case Management,* Judge Dominguez Standing Order, at 2 (Nov. 26, 2003). You did not meet and confer and you have not provided any opportunity for the parties to resolve any issues. Moreover, we do not have the basis for your motion – whether it is based solely on your clients' pending Motion to Stay, or whether you have additional grounds for requesting an extension from compliance with your Rule 26(f) and 26(a)(1) obligations.

Presuming that the sole ground for your requesting an extension of time is the pending Motion to Stay, the FTC objects to a request for an extension of time. We expect that you will inform the Court that the FTC opposes such an extension for the reasons identified in our Opposition to your Motion to Stay. We further expect that if you go forward and file a Motion for Extension of Time you will inform the Court that the FTC is planning to file an objection to such motion with the Court.

Please note that the FTC does not regard the pending Motion to Stay, or any future pending Motion for Extension of Time, as relieving your clients' of their obligation to comply with Rule 26 while such motions are pending before the Court.

Gregory J. Madden, Attorney
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mailcode: CC-9528
Washington, D.C. 20580
Tel: 202 326-2426
Fax: 202 326-3197
gmadden@ftc.gov

From: Andrew Gordon <abg@gordonlawltd.com>
Sent: Wednesday, April 17, 2019 12:34 PM
To: Madden, Gregory <gmadden@ftc.gov>
Cc: Luis Rafael Rivera <luiswichyrivera@hotmail.com>; michael <Michael@gordonlawltd.com>; Whichi Rivera <wichyriver@yahoo.com>; Schaefer, Michelle <mschaefer@ftc.gov>; sb@sbsmnlaw.com
Subject: Re: 26(f) Conference-FTC v. F9, et al.

Gregory and Michelle,

We will be filing a Motion for Extension of Time to hold the 26f and comply with 26a1

today. We will not be on the call.

Thanks,

On Mon, Apr 15, 2019 at 2:36 PM Madden, Gregory <gmadden@ftc.gov> wrote:

> Mr. Rivera -
>
> Thank you for your response, we appreciate your letting us know. However, the FTC's understanding is that Messrs. Gordon and Raff are the lead counsel for Gopalkrishna Pai and F9 Advertising LLC in this civil matter and Mr. Betances has been identified as local counsel. Your unavailability does not alter the need for the Rule 26(f) conference to go forward.
>
> Messrs. Gordon, Raff, & Betances –
>
> To repeat the message below. The FTC is setting a Rule 26(f) conference for **Wednesday, April 17 at 1:00 pm eastern**. The call-in number details are below.
>
> Please advise as to whether you will participate on behalf of your clients Gopalkrishna Pai and F9 Advertising LLC. If you elect not to participate, the FTC intends to go forward with the 26(f) report without your participation and so inform the Court.
>
> If you amend your position that you are not obligated to meet under Rule 26(f) until "after the ruling on the Motion to Stay," we are willing to discuss meeting at some other time on Wednesday or Thursday. (Neither I, nor my co-counsel, Michelle Schaefer, are available on Friday, April 19, 2019.)
>
> ---
>
> **From:** Luis Rafael Rivera <luiswichyrivera@hotmail.com>
> **Sent:** Friday, April 12, 2019 4:42 PM
> **To:** Madden, Gregory <gmadden@ftc.gov>; Andrew Gordon <abg@gordonlawltd.com>; michael <Michael@gordonlawltd.com>; Whichi Rivera <wichyriver@yahoo.com>; lsb@sbssbsmnlaw.com
> **Cc:** Schaefer, Michelle <mschaefer@ftc.gov>
> **Subject:** Re: 26(f) Conference-FTC v. F9, et al.
>
> Greetings:
>
> I will not be available during next week for the proposed Rule 26(f) conference. I will be available after Monday, April 22, 2019.
>
> Sincerely,
>
> Luis Rafael Rivera

LUIS RAFAEL RIVERA LAW OFFICES
Capital Center Bldg., Suite 401
239 Arterial Hostos Avenue
San Juan, Puerto Rico 00918
Phone: (787) 763-1780
Fax: (787) 763-2145
Email: luiswichyrivera@hotmail.com

CONFIDENTIALITY NOTE: This communication contains information belonging to Luis Rafael Rivera Law Offices, which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of said information is strictly prohibited. If you have received this communication by error, please notify us immediately.

From: Madden, Gregory <gmadden@ftc.gov>
Sent: Friday, April 12, 2019 11:47 AM
To: Andrew Gordon; michael; Whichi Rivera; luiswichyrivera@hotmail.com; lsb@sbssbsmnlaw.com
Cc: Schaefer, Michelle
Subject: RE: 26(f) Conference-FTC v. F9, et al.

Messrs. Gordon, Raff, Sanchez-Betances, and Rivera –

We have received no response to the FTC's Monday, April 8, 2019 request that Mr. Gordon identify your availability to meet in accordance with your clients' Rule 26(f) obligations.

Rule 26(f) requires that the parties "confer as soon as practicable-and in any event at least 21 days before . . . a scheduling order is due." FRCP 26(f)(1). Pursuant to Rule 16(b)(2) the scheduling order is due "60 days after any defendant has appeared." Because Gopalkrishna Pai and F9 Advertising, LLC appeared on March 11, 2019, the scheduling order is due May 11, 2019. Twenty-one days prior to May 11, 2019 is April 19, 2019. Thus, under the Rules the parties' 26(f) conference must occur *no later than* April 19, 2019. Moreover, Judge Dominguez's Standing Order reminds the parties that they "are **not** exempt from the requirements of Fed. R. Civ. P. 26(a)(1) and 26(f)." *In re: Civil Case Management,* Standing Order, at 8 (Nov. 26, 2003) (emphasis original).

During our earlier email exchange, when Mr. Gordon unilaterally cancelled our scheduled April 8, 2019 Rule 26(f) conference, he informed the FTC that he did "not believe a 26f conference is

warranted at this time" citing your clients' pending Motion to Stay as justification. As the FTC pointed out in our response on Monday of this week, your clients' Motion to Stay does not relieve your client, or the FTC, of their obligations under the Federal Rules. Indeed, as we advised, your position creates a *de facto* stay without any ruling from the Court. Therefore, it is necessary for the parties to move forward to satisfy their obligations under Rule 26(f).

Having received no response to our request that you advise us to when you are available to meet pursuant to Rule 26(f), the FTC is setting a Rule 26(f) conference for **Wednesday, April 17 at 1:00 pm eastern**. The call-in number details are below.

Please advise as to whether you will participate on behalf of your clients Gopalkrishna Pai and F9 Advertising LLC. If you elect not to participate, the FTC intends to go forward with the 26(f) report without your participation and so inform the Court.

If you amend your position that you are not obligated to meet under Rule 26(f) until "after the ruling on the Motion to Stay," we are willing to discuss meeting at some other time on Wednesday or Thursday. (Neither I, nor my co-counsel, Michelle Schaefer, are available on Friday, April 19, 2019.)

Conference call-in details:

Wednesday, April 17 at 1:00 pm eastern

877-336-1828 (number)

3263515 (passcode)

Regards,

Gregory J. Madden, Attorney

Federal Trade Commission

600 Pennsylvania Ave., N.W.

Mailcode: CC-9528

Washington, D.C. 20580

Tel: 202 326-2426

Fax: 202 326-3197

gmadden@ftc.gov

From: Madden, Gregory
Sent: Monday, April 08, 2019 2:50 PM
To: 'Andrew Gordon' <abg@gordonlawltd.com>
Cc: Schaefer, Michelle <mschaefer@ftc.gov>; michael <Michael@gordonlawltd.com>; Whichi Rivera <wichyriver@yahoo.com>; luiswichyrivera@hotmail.com
Subject: RE: 26(f) Conference-FTC v. F9, et al.

Andrew –

As I said, this matter has not been stayed and the parties have an obligation to meet and submit a Rule 26(f) report to the Court. Your pending motion does nothing to stay that obligation. Your suggestion that the parties await a decision on your Stay Motion before having the scheduling conference and submitting a report to the Court creates a *de facto* stay without any ruling from the Court. That is, Defendants are unilaterally declaring a stay of this matter.

Under the Rules it is necessary to continue to move forward on this matter unless and until the Court issues a stay. Therefore, we feel it is necessary to reschedule our conference at your earliest convenience. Please advise as to when you are available to meet to fulfill our obligations under the Federal Rules.

Regards,

Gregory J. Madden, Attorney

Federal Trade Commission

600 Pennsylvania Ave., N.W.

Mailcode: CC-9528

Washington, D.C. 20580

Tel: 202 326-2426

Fax: 202 326-3197

gmadden@ftc.gov

From: Andrew Gordon <abg@gordonlawltd.com>
Sent: Monday, April 08, 2019 1:09 PM
To: Madden, Gregory <gmadden@ftc.gov>
Cc: Schaefer, Michelle <mschaefer@ftc.gov>; michael <Michael@gordonlawltd.com>; Whichi Rivera <wichyriver@yahoo.com>; luiswichyrivera@hotmail.com
Subject: Re: 26(f) Conference-FTC v. F9, et al.

Gregory,

As I said in my email, given our pending Motion to Stay I do not believe a 26f conference is warranted at this time. I am sorry for the late notice. Pending a decision on the Motion we are happy to schedule the conference.

Best,

On Mon, Apr 8, 2019 at 11:39 AM Madden, Gregory <gmadden@ftc.gov> wrote:

> Andrew –
>
> As we told you previously, the FTC will be opposing the Motion to Stay. There is no stay of this matter, only your request for a stay. Thus, we feel your unilateral cancelling of the 26(f) motion is unjustified.

The FTC is prepared to go forward with the meeting as scheduled at 2:30. Please advise whether you will be participating at 2:30.

Regards,

Gregory J. Madden, Attorney

Federal Trade Commission

600 Pennsylvania Ave., N.W.

Mailcode: CC-9528

Washington, D.C. 20580

Tel: 202 326-2426

Fax: 202 326-3197

gmadden@ftc.gov

From: Andrew Gordon <abg@gordonlawltd.com>
Sent: Monday, April 08, 2019 12:18 PM
To: Schaefer, Michelle <mschaefer@ftc.gov>
Cc: Madden, Gregory <gmadden@ftc.gov>; michael <Michael@gordonlawltd.com>; Whichi Rivera <wichyriver@yahoo.com>
Subject: Re: 26(f) Conference-FTC v. F9, et al.

Michelle and Gregory,

I hope this email finds you well. We had previously scheduled to have the 26(f) conference this afternoon. As you know, since our discussion we filed a Motion to Stay. Since we have not received a ruling on the Motion, we do not feel it would be appropriate to have the 26(f) conference at this time. We welcome a further discussion on this topic after the ruling on the Motion to Stay.

Thanks,

On Thu, Mar 21, 2019 at 1:51 PM Schaefer, Michelle <mschaefer@ftc.gov> wrote:

--

ANDREW B. GORDON

ATTORNEY AT LAW

CERTIFIED PUBLIC ACCOUNTANT

GORDON LAW GROUP, LTD
400 CENTRAL AVE, SUITE 340

NORTHFIELD, IL 60093

DIRECT (847) 235-6095

OFFICE (847) 580-1279

FAX (847) 305-1202
EMAIL ABG@GORDONLAWLTD.COM

The information contained in this electronic mail message, including any attachments, is confidential, may be privileged and is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2522. Unauthorized use, copying or distribution of this message, including any attachments, is strictly prohibited and may be unlawful. If this message was sent to you in error, please notify the sender by return email and destroy this message, including any attachments.

Any tax advice contained in this communication was not intended or written to be used, and cannot be used, to rely on for the purpose of avoiding any penalties that may be imposed by any governmental taxing authority.

--

ANDREW B. GORDON

ATTORNEY AT LAW

CERTIFIED PUBLIC ACCOUNTANT

GORDON LAW GROUP, LTD
400 CENTRAL AVE, SUITE 340

NORTHFIELD, IL 60093

DIRECT (847) 235-6095

OFFICE (847) 580-1279

FAX (847) 305-1202
EMAIL ABG@GORDONLAWLTD.COM

The information contained in this electronic mail message, including any attachments, is confidential, may be privileged and is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2522. Unauthorized use, copying or distribution of this message, including any attachments, is strictly prohibited and may be unlawful. If this message was sent to you in error, please notify the sender by return email and destroy this message, including any attachments.

Any tax advice contained in this communication was not intended or written to be used, and cannot be used, to rely on for the purpose of avoiding any penalties that may be imposed by any governmental taxing authority.

--

ANDREW B. GORDON

ATTORNEY AT LAW
CERTIFIED PUBLIC ACCOUNTANT

GORDON LAW GROUP, LTD
400 CENTRAL AVE, SUITE 340
NORTHFIELD, IL 60093
DIRECT (847) 235-6095
OFFICE (847) 580-1279
FAX (847) 305-1202
EMAIL ABG@GORDONLAWLTD.COM

The information contained in this electronic mail message, including any attachments, is confidential, may be privileged and is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2522. Unauthorized use, copying or distribution of this message, including any attachments, is strictly prohibited and may be unlawful. If this message was sent to you in error, please notify the sender by return email and destroy this message, including any attachments.

Any tax advice contained in this communication was not intended or written to be used, and cannot be used, to rely on for the purpose of avoiding any penalties that may be imposed by any governmental taxing authority.