

1:19cv12005, Ahumada V. Global Widget Llc

US District Court Docket
United States District Court, Massachusetts
(Boston)

This case was retrieved on **09/08/2021**

Header

Case Number: 1:19cv12005
Date Filed: 09/24/2019
Assigned To: Judge Allison D. Burroughs
Nature of Suit: Other Contract (190)
Cause: Diversity-Breach of Contract
Lead Docket: None
Other Docket: None
Jurisdiction: Diversity

Class Code: Open
Statute: 28:1332
Jury Demand: Plaintiff
Demand Amount: \$0
NOS Description: Other Contract

Participants

Litigants

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Individually and on Behalf of All Others Similarly Situated I
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Proceedings

#	Date	Proceeding Text	Source
1	09/24/2019	COMPLAINT 1:19-cv-12005 against All Defendants Filing fee: \$ 400, receipt number 0101-7892731 (Fee Status: Filing Fee paid), filed by Marjorie Ahumada. (Attachments: # 1 Category Form, # 2 Civil Cover Sheet)(Leviton, Jason) (Entered: 09/24/2019)	
2	09/25/2019	ELECTRONIC NOTICE of Case Assignment. Judge Allison D. Burroughs assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Donald L. Cabell. (Finn, Mary) (Entered: 09/25/2019)	
3	09/25/2019	Summons Issued as to All Defendants. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Burgos, Sandra) (Entered: 09/25/2019)	
4	11/15/2019	AMENDED COMPLAINT against Global Widget LLC, filed by Marjorie Ahumada.(Leviton, Jason) (Entered: 11/15/2019)	
5	11/22/2019	MOTION for Leave to Appear Pro Hac Vice for admission of Gregory F. Coleman Filing fee: \$ 100, receipt number 0101-7983592 by Marjorie Ahumada. (Attachments: # 1 Certification)(Leviton, Jason) (Entered: 11/22/2019)	

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6	11/22/2019	MOTION for Leave to Appear Pro Hac Vice for admission of Rachel L. Soffin Filing fee: \$ 100, receipt number 0101-7983640 by Marjorie Ahumada. (Attachments: # 1 Certification)(Leviton, Jason) (Entered: 11/22/2019)	
7	11/22/2019	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 5 Motion for Leave to Appear Pro Hac Vice Added Gregory F. Coleman. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. Pursuant to Local Rule 83.5.3, local counsel shall also file an appearance in this matter. Further, local counsel shall review all filings and shall personally appear in Court for any hearings or conferences, unless expressly excused by the Court for good cause. (McDonagh, Christina) (Entered: 11/22/2019)	
8	11/22/2019	MOTION for Leave to Appear Pro Hac Vice for admission of Justin G. Day Filing fee: \$ 100, receipt number 0101-7983713 by Marjorie Ahumada. (Attachments: # 1 Certification)(Leviton, Jason) (Entered: 11/22/2019)	
9	11/22/2019	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 6 Motion for Leave to Appear Pro Hac Vice Added Rachel L. Soffin. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. Pursuant to Local Rule 83.5.3, local counsel shall also file an appearance in this matter. Further, local counsel shall review all filings and shall personally appear in Court for any hearings or conferences, unless expressly excused by the Court for good cause. (McDonagh, Christina) (Entered: 11/22/2019)	
10	11/22/2019	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 8 Motion for Leave to Appear Pro Hac Vice Added Justin G. Day. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. Pursuant to Local Rule 83.5.3, local counsel shall also file an appearance in this matter. Further, local counsel shall review all filings and shall personally appear in Court for any hearings or conferences, unless expressly excused by the Court for good cause. (McDonagh, Christina) (Entered: 11/22/2019)	
11	12/13/2019	NOTICE of Appearance by Emily G. Coughlin on behalf of Global Widget LLC (Coughlin, Emily) (Entered: 12/13/2019)	
12	12/13/2019	Assented to MOTION for Leave to Appear Pro Hac Vice for admission of Sara M. Turner; Kyle A. Diamantas Filing fee: \$ 200, receipt number 0101-8014691 by Global Widget LLC. (Attachments: # 1 Exhibit A., Rule 83.5.3 Affidavit of Sara M. Turner, # 2 Exhibit B., Rule 83.5.3 Affidavit of Kyle A. Diamantas)(Coughlin, Emily) (Entered: 12/13/2019)	
13	12/16/2019	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 12 Motion for Leave to Appear Pro Hac Vice Added Sara M. Turner and Kyle A. Diamantas. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. Pursuant to Local Rule 83.5.3, local counsel	

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		shall also file an appearance in this matter. Further, local counsel shall review all filings and shall personally appear in Court for any hearings or conferences, unless expressly excused by the Court for good cause. (McDonagh, Christina) (Entered: 12/16/2019)	
14	12/27/2019	SUMMONS Returned Executed Global Widget LLC served on 12/19/2019, answer due 1/9/2020. (Shub, Jonathan) (Entered: 12/27/2019)	
15	01/16/2020	MOTION to Dismiss and Strike, or, in the Alternative, Stay by Global Widget LLC.(Coughlin, Emily) (Entered: 01/16/2020)	
16	01/16/2020	MEMORANDUM in Support re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay filed by Global Widget LLC. (Attachments: # 1 Affidavit Declaration of Margaret Richardson, # 2 Exhibit A, Green Roads Order)(Coughlin, Emily) (Entered: 01/16/2020)	
17	01/21/2020	NOTICE of Appearance by Matthew J. Lynch on behalf of Global Widget LLC (Lynch, Matthew) (Entered: 01/21/2020)	
18	01/22/2020	Assented to MOTION for Extension of Time to February 28, 2020 to File Response/Reply as to 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay by Marjorie Ahumada.(Leviton, Jason) (Entered: 01/22/2020)	
19	01/23/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 18 Motion for Extension of Time to File Response/Reply re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay Responses due by 2/28/2020 (Folan, Karen) (Entered: 01/23/2020)	
20	02/28/2020	Opposition re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay filed by Marjorie Ahumada. (Attachments: # 1 Exhibit A)(Leviton, Jason) (Entered: 02/28/2020)	
21	03/11/2020	MOTION for Leave to File a Reply Brief in Support of Its Motion to Dismiss and Strike, or in the Alternative, to Stay by Global Widget LLC. (Attachments: # 1 Exhibit A., Defendant Global Widget, LLC's reply brief- DRAFT)(Coughlin, Emily) (Entered: 03/11/2020)	
22	03/12/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 21 Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Folan, Karen) (Entered: 03/12/2020)	
23	03/12/2020	REPLY to Response to 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay filed by Global Widget LLC. (Lynch, Matthew) (Entered: 03/12/2020)	
24	03/13/2020	MOTION for Leave to Appear Pro Hac Vice for admission of Kevin Laukaitis, Jonathan Shub Filing fee: \$ 200, receipt number 0101-8154942 by Marjorie Ahumada. (Attachments: # 1 Certificate, # 2 Motion, # 3 Certificate)(Leviton, Jason) (Entered: 03/13/2020)	
25	03/13/2020	MOTION for Leave to Appear Pro Hac Vice for admission of Neal J. Deckant, Frederick J. Klorczyk III, Brittany S. Scott Filing fee: \$ 300, receipt number 0101-8155027 by Marjorie Ahumada. (Attachments: # 1 Certificate, # 2 PHV Motion, # 3 Certificate, # 4 PHV Motion, # 5 Certificate)(Leviton, Jason) (Entered: 03/13/2020)	
26	03/16/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 24 Motion for Leave to Appear Pro Hac Vice Added Jonathan Shub and Kevin Laukaitis. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF	

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		Registration Form. Pursuant to Local Rule 83.5.3, local counsel shall also file an appearance in this matter. Further, local counsel shall review all filings and shall personally appear in Court for any hearings or conferences, unless expressly excused by the Court for good cause. (McDonagh, Christina) (Entered: 03/16/2020)	
27	03/16/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered granting 25 Motion for Leave to Appear Pro Hac Vice Added Brittany S. Scott, Frederick J. Klorczyk III and Neal J. Deckant. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. Pursuant to Local Rule 83.5.3, local counsel shall also file an appearance in this matter. Further, local counsel shall review all filings and shall personally appear in Court for any hearings or conferences, unless expressly excused by the Court for good cause. (McDonagh, Christina) (Entered: 03/16/2020)	
28	06/03/2020	Notice of Supplemental Authorities re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay (Attachments: # 1 Exhibit A.)(Coughlin, Emily) (Entered: 06/03/2020)	
29	06/09/2020	NOTICE of Change of Address or Firm Name by Jonathan Shub (Shub, Jonathan) (Entered: 06/09/2020)	
30	06/12/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered. Defendant has filed a notice of supplemental authority, [ECF No. 28], in support of its pending motion to dismiss, [ECF No. 15]. The parties may, if they choose, file a brief discussing whether and how this supplemental authority impacts their position with regard to the motion to dismiss. Parties' briefs should be no more than 5 pages in length and should be filed by June 26, 2020. (McDonagh, Christina) (Entered: 06/12/2020)	
31	06/16/2020	Notice of Supplemental Authorities re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay (Attachments: # 1 Exhibit filed order granting motion to stay)(Lynch, Matthew) (Entered: 06/16/2020)	
32	06/26/2020	ADDENDUM re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay Brief in Support of Notices of Supplemental Authority filed by Global Widget LLC. (Coughlin, Emily) (Entered: 06/26/2020)	
33	06/26/2020	Notice of Supplemental Authorities re 15 MOTION to Dismiss and Strike, or, in the Alternative, Stay RESPONSE IN OPPOSITION TO filed by Marjorie Ahumada. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Laukaitis, Kevin) (Entered: 06/26/2020)	
34	08/11/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered. Defendant's motion to dismiss or stay, [ECF No. 15], is GRANTED in part and DENIED in part. For the reasons set forth below, the case is stayed pending forthcoming FDA regulations on the products at issue. The parties are to submit a status report every 90 days, beginning on October 1, 2020, advising the Court as to the status of FDA rulemaking on the issues presented in this matter. Defendant's motion to dismiss is otherwise denied with leave to renew once the stay has been lifted. Three other district courts have recently granted stays in matters that are substantially similar to this one, where Plaintiff brings claims related to Defendant's sale of cannabidiol ("CBD") products that are alleged to contain less CBD than is represented on the products' labels and states that the FDA "has not legalized CBD for sale as a supplement." [ECF No. 4 paras. 23, 39-40]. Those courts found that the primary jurisdiction doctrine warranted a stay pending	

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		<p>imminent FDA regulation of CBD products. Glass v. Glob. Widget, LLC, No. 2:19-cv-01906, 2020 U.S. Dist. LEXIS 104400 (E.D. Cal. June 15, 2020); Colette v. CV Scis., Inc., No. 2:19-cv-10227, 2020 U.S. Dist. LEXIS 93553 (C.D. Cal. May 22, 2020); Snyder v. Green Rds. of Fla. LLC, No. 0:19-cv-62342, 2020 U.S. Dist. LEXIS 1145 (S.D. Fla. Jan. 3, 2020). "The primary jurisdiction doctrine is intended to 'serve[] as a means of coordinating administrative and judicial machinery' and to 'promote uniformity and take advantage of agencies' special expertise.'" <i>Pejepscot Indus. Park v. Me. Cent. R.R. Co.</i>, 215 F.3d 195, 205 (1st Cir. 2000) (quoting <i>Mashpee Tribe v. New Seabury Corp.</i>, 592 F.2d 575, 580 (1st Cir. 1979)). "The primary jurisdiction rubric is less an organized doctrine than a set of precedents that guide courts in deciding when an issue should be resolved in the first instance by an agency that has special competence to address it." <i>PHC, Inc. v. Pioneer Healthcare, Inc.</i>, 75 F.3d 75, 80 (1st Cir. 1996) (citing <i>United States v. Western Pacific R.R. Co.</i>, 352 U.S. 59, 64 (1956)). "[T]he specific procedure utilized to enable the referral" under the primary jurisdiction doctrine "is flexible." <i>Am. Auto. Mfrs. Assn v. Mass. Dept of Env'tl. Prot.</i>, 163 F.3d 74, 82 (1st Cir. 1998). A Court may therefore make a direct referral to an agency under a statute providing for referral, or may stay an action to either allow the parties to request an agency decision or to wait for the agency to engage in imminent rulemaking. See <i>id.</i> The First Circuit has identified three relevant factors in determining whether to apply the doctrine: "(1) whether the agency determination lies at the heart of the task assigned the agency by Congress; (2) whether agency expertise is required to unravel intricate, technical facts; and (3) whether, though perhaps not determinative, the agency determination would materially aid the court." <i>Id.</i> The Court finds that all three factors are met here. As to the first factor, in regulating CDB, the FDA as an agency tasked with regulating food and drugs (including labeling and marketing) would certainly be making a determination that is at the heart of that agency's tasks. See <i>Snyder</i>, 2020 U.S. Dist. LEXIS 1145, *20 ("[T]he Agriculture Improvement Act of 2018... explicitly recognized the FDA's authority to regulate products containing cannabis-derived compounds, including hemp-derived products under the FDCA."). Second, the FDA is in the best position to determine whether CBD is a legal product in the forms marketed by Defendant, whether those products are required to contain certain dosages of CBD, and how those products should be manufactured, tested, and labeled to ensure compliance with FDA requirements. See <i>id.</i> ("[T]he exercise of regulatory authority by the FDA over the labelling of ingestible CBD products requires both expertise and uniformity in administration."). Finally, the FDA's forthcoming regulations would be of substantial assistance to the Court as existing regulations "currently provide little guidance with respect to whether CBD ingestibles, in all their variations are food supplements, nutrients or additives and what labelling standards are applicable to each iteration." <i>Id.</i> at *21-22. Although not a factor, the Court also notes that "the number of CBD class actions currently pending in the federal district courts makes clear the danger of inconsistent adjudications." <i>Colette</i>, 2020 U.S. Dist. LEXIS 93553, at *13. For example, Defendant is named as a defendant in the Glass matter pending before the Eastern District of California, in which several plaintiffs (also represented, in part, by counsel for Plaintiff in this matter), raise substantially similar claims. See 2020 U.S. Dist. LEXIS 104400. Plaintiff argues that the FDA has already determined that CBD products are illegal. [ECF No. 20 at 14-15]. The FDA, however, has issued non-binding</p>	

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		<p>guidance only, and has not issued final rules or regulations on CBD products. As the FDA notes on its website, it "is evaluating the regulatory frameworks that apply to certain cannabis-derived products that are intended for non-drug uses, including whether and/or how the FDA might consider updating its regulations, as well as whether potential legislation might be appropriate." What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD, FDA, https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis (last updated Mar. 5, 2020). This evaluation has not yet resulted in a final rule. See Colette, 2020 U.S. Dist. LEXIS 93553, at *13 ("The fact remains that the FDA has not formally established its position.... Congress has committed regulation of CBD products to the FDA and expects the agency to publish guidance as soon as possible.").In addition, Plaintiff argues that any pending FDA regulations will not be retroactive, and therefore will not apply to Plaintiff's claims. [Id. at 15]. As other courts have noted, however, "[w]hether cannabis regulations will apply retroactively is unknown, but given the widespread use and sale of CBD products and particularly the large number of states that have legalized their sale Congress may conclude that fairness, practicality, and comity require retroactive legislation." Colette, 2020 U.S. Dist. LEXIS 93553, at *16; see also Glass, 2020 U.S. Dist. LEXIS 104400, at *10 ("Any presumption against retroactivity, however, may be overcome by statutory authorization."). "[T]he FDA has yet to issue rules and is working feverishly to do so," Colette, 2020 U.S. Dist. LEXIS 93553, at *16-17; see Snyder, 2020 U.S. Dist. LEXIS 1145, *17 n.2 (noting that Senator Mitch McConnell recently "moved to include report language in the FY2020 appropriations bill requiring the FDA to hasten progress toward regulating the market for CBD products"). Given the imminence of FDA's rulemaking in this area, in combination with the Court's analysis of the First Circuit's factors for invoking the primary jurisdiction doctrine, the Court finds that a stay pending the issuance of FDA regulations touching on Plaintiff's claims is appropriate. (McDonagh, Christina) (Entered: 08/11/2020)</p>	
35	10/01/2020	STATUS REPORT by Marjorie Ahumada. (Attachments: # 1 Exhibit A)(Shub, Jonathan) (Entered: 10/01/2020)	
36	10/05/2020	Judge Allison D. Burroughs: ELECTRONIC ORDER entered. The Court is in receipt of the parties' joint status report. [ECF No. 35]. This case remains stayed. The parties are ordered to enter another status report within 90 days.(McDonagh, Christina) (Entered: 10/05/2020)	
37	12/30/2020	STATUS REPORT by Global Widget LLC. (Coughlin, Emily) (Entered: 12/30/2020)	
38	03/26/2021	JOINT STATEMENT of counsel . (Coughlin, Emily) (Entered: 03/26/2021)	
39	06/08/2021	NOTICE of Change of Address or Firm Name by Gregory F. Coleman (Coleman, Gregory) (Entered: 06/08/2021)	
40	06/28/2021	STATUS REPORT Joint status report by Global Widget LLC. (Attachments: # 1 Exhibit Rodriguez opinion)(Coughlin, Emily) (Entered: 06/28/2021)	
41	07/30/2021	Judge Allison D. Burroughs: ELECTRONIC ORDER entered. The Court is in receipt of the parties' June 28, 2021 joint status report, [ECF No. 40]. This case remains stayed. The parties are ordered to file another status report as directed by the Court's August 11, 2020 Order, [ECF No. 34]. (McDonagh, Christina) (Entered: 07/30/2021)	

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