

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Online Merchants Guild	:	Civil No. 1:21-CV-00369
	<i>Plaintiff</i>	:
	:	(Judge Conner)
v.	:	(Magistrate Judge Schwab)
	:	
C. DANIEL HASSELL, <i>in his official</i>	:	
<i>capacity as Secretary of Revenue,</i>	:	
<i>Department of Revenue,</i>	:	
	<i>Defendant</i>	:

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STIPULATION AND JOINT CASE MANAGEMENT SCHEDULE

AND NOW, this 18th day of March, 2021, come the Parties in the above captioned action, by and through their undersigned counsel, to submit this Stipulation and Joint Case Management Order, and in support thereof, aver as follows:

1. This matter was commenced on February 26, 2021, by the Online Merchants Guild (“the Guild”), with the filing of a Complaint for Declaratory and Injunctive Relief as docketed at *Online Merchants Guild v. Hassell*, No. 1:21-cv-00369(M.D.Pa.) [Doc. 1].
 - a. The Complaint alleges, *inter alia*, that certain members of the Guild have received letters from the Pennsylvania Department of Revenue indicating that those members may have a physical presence in the Commonwealth and may be subject to Pennsylvania’s income and sales tax laws.
 - b. The Complaint further alleges that the letters direct the Guild’s members receiving such letters to either complete the questionnaire enclosed within

those letters within fifteen (15) days from the date of that letter or be faced with additional enforcement actions and the forfeiture of any penalty relief or limited lookback provisions provided by such voluntary compliance program.

2. The Defendant intended (and intends) to file a response to that Complaint raising various defenses, and, under standard operation of the rules had until May 3, 2021 to do so.¹
3. On March 4 and 5, 2021, respectively, the Guild filed a Motion for Temporary Restraining Order and Preliminary Injunction and its brief in support thereof, wherein it sought to enjoin Defendant from requiring that the members of the Online Merchants Guild register with the Department of Revenue based on their participation in Amazon's FBA program. [Docs. 9-10].
4. The Defendant intended (and intends) to file a response to that Motion raising various defenses and arguments in opposition thereto, and, under standard operation of the rules, had until March 19, 2021 to do so.
5. On March 11, 2021, the Guild moved to expedite consideration of the Motion for Temporary Restraining Order and Preliminary Injunction. [Doc. 12].

¹ The sixty (60) day period would conclude on Sunday, May 2, 2021. Thus, FED. R. CIV. P. 4 establishes that Defendant's reply will be timely so long as it is filed on or before Monday, May 3, 2021.

6. The Court granted such motion and scheduled a hearing on for March 12, 2021. [Doc. 14].
7. With consent of the parties, this Court issued an Order referring the Motion for Temporary Restraining Order and Preliminary Injunction to a Magistrate Judge for purposes of evaluating settlement of that Motion. [Doc. 19].
8. A settlement conference was held on March 15, 2021. [Doc. 20].
9. Both Parties wish to allow orderly briefing and consideration of the Guild's request for preliminary injunctive relief and the Pennsylvania Department of Revenue's defenses thereto, and, in furtherance thereof, discussed mechanisms which could obviate the need for the entry of a Temporary Restraining Order.
10. The Pennsylvania Department of Revenue's website indicates that it is currently offering a 90-day Voluntary Compliance Program, which began on February 7, 2021, and runs through May 8, 2021, for any business that has inventory or stores property in Pennsylvania but is not registered to collect and pay Pennsylvania taxes. *See* <https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/TaxObligOnlineRetailers/Pages/Voluntary-Compliance-Program-For-Retailers.aspx>
11. The Department's website further indicates that such Voluntary Compliance Program offers a limited lookback period and penalty relief when a participating business becomes compliant through such program—that is, participants choosing

to participate in the program would not be liable for taxes owed prior to January 1, 2019 and would be given penalty relief for any non-compliance for past due tax returns not filed and taxes that were not paid.

12. Thus, in consideration of the foregoing, the Parties hereby agree and STIPULATE that any Guild member who (a) received or later receives the letter from the Defendant described above, and (b) wishes to participate in the Voluntary Compliance Program described in that letter, will be entitled to any benefits described in such letter, so long as such Guild member fulfills the obligations described in such letter, on or before May 8, 2021.

13. In consideration of the stipulation described in the foregoing paragraph, the Guild's Motion for Temporary Restraining Order is WITHDRAWN (the Motion for a Preliminary Injunction remains pending).

14. Nothing within this stipulation shall be construed as an admission or waiver by the Guild, its members, or Secretary Hassell, or the Department of Revenue, regarding the jurisdiction of the Department to send the letter, the jurisdiction of this Court to address the allegations of the Guild's Complaint, or the merits of the Motion for Temporary Restraining Order and Preliminary Injunction.

15. Further, to ensure the orderly briefing and consideration of the issues presented in this case, the Parties hereby propose the following Case Management Schedule:

- a. Defendant's Response to the Guild's Motion for Preliminary Injunction due on or before: **March 29, 2021**.

b. Plaintiff's Reply to that Response due on or before: **April 12, 2021.**

c. Defendant's Response to the Complaint due on or before: **May 3, 2021.**

16. The Parties have attached a proposed Order which incorporates the above stipulation and proposed joint schedule.

WHEREFORE, the Parties respectfully request this Court enter an Order in accordance with the foregoing Stipulation and Proposed Case Management Schedule and have attached a Proposed Order hereto.

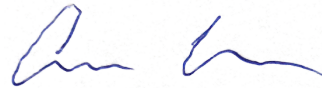
Respectfully submitted,

/s/ Aaron K. Block

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Dated: 03/18/21

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	<i>Defendant</i>	Electronically filed document

ORDER

AND NOW, this _____ day of March, 2021, in consideration of the STIPULATION AND JOINT CASE MANAGEMENT SCHEDULE, Doc. __, the Court issues the following ORDER:

1. The Motion for Temporary Restraining Order filed by the Online Merchants Guild is hereby WITHDRAWN in accordance with the Stipulation entered into by the Parties on this date.
2. The Motion for Preliminary Injunction filed by the Online Merchants Guild shall proceed under the following agreed to Case Management Schedule:
 - a. Defendant's Response to the Guild's Motion for Preliminary Injunction is due on or before: **March 29, 2021.**
 - b. Plaintiff's Reply to Defendant's Response is due on or before: **April 12, 2021.**

3. The Defendant shall file its Response to the Guild's Complaint (Doc. No.1) on or before: **May 3, 2021.**
