

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAFARI CLUB INTERNATIONAL,)	
)	
Plaintiff,)	1:11-cv-01564-BAH
)	
v.)	(consolidated with cases 1:12-cv-00194-
)	BAH and 1:12-cv-00340-BAH)
)	
KEN SALAZAR, <i>et al.</i> ,)	FEDERAL DEFENDANTS'
)	OPPOSITION TO SAFARI CLUB
Defendants.)	INTERNATIONAL'S MOTION TO
)	STAY BRIEFING OF SUMMARY
)	JUDGMENT MOTIONS

TERRY OWEN, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
U.S. DEPARTMENT OF THE INTERIOR, <i>et</i>)
<i>al.</i> ,)
)
Defendants.)

EXOTIC WILDLIFE ASSOCIATION, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
U.S. DEPARTMENT OF THE INTERIOR, <i>et</i>)
<i>al.</i> ,)
)
Defendants.)

Federal Defendants hereby file their opposition to Plaintiff Safari Club International's ("SCI") Motion to Stay the Briefing of Summary Judgment Motions, filed on March 16, 2012 (ECF No. 32).¹ SCI asks the Court to stay the parties' summary judgment briefing schedule until 14 days after the Court rules on its Motion for Preliminary Injunction. SCI claims a stay is warranted because the "Court has set an expedited briefing schedule for Safari Club's preliminary injunction motion that coincidentally sets the date for Safari Club's reply to Federal Defendants' response/opposition on the same date (March 23, 2012) that Safari Club's opening brief in support of summary judgment is due," it did not know it would move for a preliminary injunction at the time the parties agreed to the summary judgment briefing schedule, and the current schedule "is not the most meaningful or expeditious use of the Court's and the parties' time and resources." ECF No. 32 at 5. SCI's alleged reasons for a stay are belied by the facts and the law.

To begin with, SCI contends that it was not aware when the parties agreed to a summary judgment briefing schedule in December 2011 that it would move for a preliminary injunction because it did not become aware it would file such motion until after the U.S. Fish and Wildlife Service ("Service") issued a rule on January 5, 2012 removing a permit exemption for U.S. captive scimitar-horned oryx, addax, and dama gazelle, as of April 4, 2012. ECF No. 32 at 4-5. While Plaintiff may not have been aware in December 2011 that it would file a motion for

¹ Plaintiffs Terry Owen, et al., filed a response to SCI's motion on March 19, 2012 indicating that they support SCI's motion. ECF No. 36. While Federal Defendants oppose SCI's motion, they agree with the Owen Plaintiffs that the summary judgment briefing schedules for SCI's and the Owen Plaintiffs' cases should remain consistent because they have overlapping claims.

preliminary injunction based on a rule issued in January 2012, the parties reaffirmed the summary judgment briefing schedule on February 17, 2012, less than three weeks before SCI filed its motion for preliminary injunction and more than a month after the Service issued its January 5, 2012 rule. ECF No. 24 at 2. SCI should have been aware at that time of its plan to move for a preliminary injunction and should have availed itself of that opportunity to adjust the summary judgment briefing schedule if it believed such adjustment was necessary. Even if SCI was not aware of its plans as of February 17, 2012, it has failed since that time to seek any modification to the summary judgment briefing schedule.

SCI also erroneously contends that the Court “set an expedited briefing schedule for Safari Club’s preliminary injunction motion.” ECF No. 32 at 5. The Court did no such thing. SCI chose to wait until March 8, 2012 to file a motion for preliminary injunction based on a rule issued by the Service on January 5, 2012, set to go into effect on April 4, 2012. ECF No. 26. Pursuant to the Court’s local rules, an opposition to a motion for preliminary injunction is due within seven days from the date of service. Local Civil Rule 65.1(c). The local rules do not specifically provide for replies to motions for preliminary injunction. *Id.* The Court issued a minute order on March 8, 2012 setting a deadline of March 19, 2012 for Federal Defendants’ opposition to SCI’s motion for preliminary injunction, and March 23, 2012 as the deadline for SCI’s reply. The March 19, 2012 date is 11 days after the date of service. Accounting for the three days added when a party must act within a specified time after service made electronically, the deadline the Court set for Federal Defendants’ opposition to the motion for preliminary injunction is precisely the amount of time contemplated in the local and federal rules. *See* Federal Rules of Civil Procedure 6(d) and 5(b)(2)(E); Local Civil Rule 65.1(c). Moreover, given

that the local rules provide for only seven days to file an opposition to a motion for preliminary injunction, and do not provide for replies to motions for preliminary injunction, the Court's minute order granting SCI four days to file a reply to its motion for preliminary injunction was generous.² In sum, the Court's briefing schedule for the motion for preliminary injunction was not "expedited." SCI knew, or should have known, when it filed its motion for preliminary injunction that the briefing on that motion would overlap with the deadline for its motion for summary judgment.

Finally, SCI argues that staying the summary judgment briefing pending a ruling on its motion for preliminary injunction is the most efficient way to proceed. ECF No. 32 at 6. SCI's argument is belied by the law. Because a preliminary injunction is a temporary means for a court to maintain the status quo until adjudication of the merits (here, through summary judgment briefing), it is not efficient to delay adjudication of the merits because a motion for preliminary injunction has been filed. *District 50, United Mine Workers of America v. International Union, United Mine Workers of America*, 412 F.2d 165, 168 (D.C. Cir. 1969) ("The usual role of a preliminary injunction is to preserve the status quo pending the outcome of litigation."); *Shelley v. American Postal Workers Union*, 775 F. Supp. 2d 197, 203 (D.D.C. 2011) ("The purpose of a

²In their response, the Owen Plaintiffs ask the Court "to order the same schedule for briefing for the filing of the reply for the preliminary injunction motion as the schedule for the SCI case," *i.e.*, a deadline of March 23, 2012. ECF No. 36 at 2-3. Again, while the Local Rules do not provide for replies to motions for preliminary injunction, a deadline consistent with the Court's schedule in the SCI case would be four days after Federal Defendants filed their opposition to the Owen Plaintiffs' motion for preliminary injunction. Since Federal Defendants filed their opposition on March 13, 2012, the Owen Plaintiffs should have filed any reply to that opposition no later than March 19, 2012.

preliminary injunction ‘is merely to preserve the relative positions of the parties until a trial on the merits can be held.’”) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). Rather, the most efficient way to proceed is to have the Court adjudicate the merits on summary judgment as expeditiously as possible, which will be accomplished by proceeding with briefing the parties’ cross-motions for summary judgment now.

For all these reasons, the Court should deny the motion.³

Dated: March 20, 2012⁴

Respectfully submitted,

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³ To the extent the Court may disagree, Federal Defendants respectfully request that the Court vacate the summary judgment briefing schedule and order the parties to submit a new schedule for Court approval within seven days of a decision on SCI’s motion for preliminary injunction. Because the parties do not know when the Court will rule on SCI’s motion for preliminary injunction, SCI’s request that summary judgment briefing begin 14 days after an order on its motion for preliminary injunction may result in a schedule that conflicts with counsel’s deadlines in other cases.

⁴ Counsel apologizes for the late filing. She was ill yesterday and did not realize until the morning that she had failed to file this document, and filed it as soon as she did.

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