

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

STATE OF SOUTH DAKOTA,)	3:16-CV-03019-RAL
)	
Plaintiff,)	
)	
v.)	
)	JOINT MOTION FOR ENTRY OF
WAYFAIR INC.)	BRIEFING SCHEDULE
OVERSTOCK.COM, INC.)	
NEWEGG INC.)	
)	
Defendants.)	
)	

The State of South Dakota (“Plaintiff”), by and through its legal counsel, Richard M. Williams, Deputy Attorney General, and Defendants Wayfair Inc., Overstock.com, Inc., and Newegg Inc. (“Defendants”), by and through their counsel, George S. Isaacson, Martin I. Eisenstein, Matthew P. Schaefer and Jeff Bratkiewicz, jointly submit this motion for the entry of a briefing schedule for the filing of cross-motions by the parties concerning the dispositive issues in this case. Defendants will file a motion for summary judgment, and Plaintiff will file a motion to remand the case to state court. As part of their agreed schedule, the Parties move to extend the time allowed for Plaintiff to file a motion for remand under 28 U.S.C. § 1447(c).

Defendants filed their Notice of Removal (DOC. 1) on May 25, 2016, transferring to this Court the Plaintiff’s action seeking a declaratory judgment as to the constitutional validity and applicability of South Dakota Senate Bill 106 (“S.B. 106”), 91st Session, South Dakota Legislature, 2016, “An Act to

provide for the collection of sales taxes from certain remote sellers” (“The Act”). The Parties agree that this matter turns on pure questions of law and that no discovery is necessary so that an early motion for judgment as a matter of law is appropriate. While Plaintiff believes the matter belongs in state court, and proposes to seek remand, both Parties agree that a prompt adjudication of this matter is important.

To this end, and in order to expedite this case, the Parties have agreed on a briefing schedule that includes briefing on a motion for summary judgment by the Defendants and a motion for remand by the Plaintiff. The proposed schedule would place both issues before the Court simultaneously. In order for Plaintiff’s motion for remand to fit within the proposed schedule, however, Plaintiff would need an extension of the 30-day limit for filing a motion to remand “on the basis of any defect other than subject matter jurisdiction,” as set forth in 28 U.S.C. § 1447(c). Defendants have no objection to such an extension.

Therefore, the Parties respectfully move this Court for the following relief:

1. That, pursuant to the agreed upon briefing schedule set forth below, the Court enter an order extending the time for the Plaintiff to file a motion to remand to July 22, 2016; and
2. That the Court enter a scheduling order consistent with the following agreed upon briefing schedule:
 - a. July 22, 2016 - Plaintiff files its motion for remand and Defendants file their motion for summary judgment.

- b. August 12, 2016 - Plaintiff responds to Defendants' motion for summary judgment and Defendants respond to Plaintiff's motion for remand.
- c. August 26, 2016 - Plaintiff files its reply to Defendants' response to Plaintiff's motion to remand and Defendants file their reply to Plaintiff's response to Defendants' motion for summary judgment.

If the proposed briefing schedule is approved by the Court, the Parties will file a modified Form 52 Report reflecting their agreement that no discovery is required and incorporating the agreed briefing schedule.

Dated this 21st day of June, 2016.


MARTY J. JACKLEY
ATTORNEY GENERAL

By: 

Richard M. Williams
Deputy Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
Telephone: (605) 773-3215
Telefax: (605) 773-4106
E-mail: rich.williams@state.sd.us

Dated this 21st day of June, 2016.

BANGS, MCCULLEN, BUTLER, FOYE & SIMMONS, LLP

By: 

Jeff Bratkiewicz

jeffb@bangsmccullen.com

Kathryn J. Hoskins

khoskins@bangsmccullen.com

6340 South Western Avenue, Suite 160

P.O. Box 88208

Sioux Falls, SD 57109-8208

Telephone: (605) 339-6800

Facsimile: (605) 339-6801

George S. Isaacson

gisaacson@brannlaw.com

Martin I. Eisenstein

meisenstein@brannlaw.com

Matthew P. Schaefer

mschaefer@brannlaw.com

BRANN & ISAACSON

184 Main Street

P.O. Box 3070

Lewiston, ME 04243-3070

Telephone: (207) 786-3566

Facsimile: (207) 783-9325

Attorneys for Defendants