

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

**JUDGE WALKER D. MILLER**

**COURTROOM MINUTES**

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Courtroom Deputy: Bernique Abiakam  
Court Reporter: Paul Zuckerman

Date: December 23, 2009

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**Civil Case No.: 09-cv-02779-WDM-KMT**

Parties

Counsel

**FETTER LOGIC, INC., a Colorado  
corporation,**

Eric Liebman

Plaintiff,

vs.

**ENVESTNET ASSET MANAGEMENT, INC.,  
a Delaware corporation,**

Tom Johnson  
Gary Elden  
Gary Miller  
Ian Wilber

Defendant.

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**HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER**

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**9:06 a.m. COURT IN SESSION**

APPEARANCES OF COUNSEL.

Preliminary remarks by the Court regarding pending motions.

Discussion regarding proposed time usage schedule.

Argument heard regarding:

Defendant's Motion and Memorandum of Law in Support of Its Motion To Transfer This action To tHe United States District Court For tHe Northern District Of Illinois Pursuant To 28 U.S.C. § 1404, or, In The alternative, Dismiss This Action So It Can Be Re-filed In That District As A Compulsory Counterclaim (Filed 1/14/09; Doc. No. 11); and

Plaintiff's Motion Preliminarily Enjoin Envestnet Asset Management, Inc. From Further Proceeding In Illinois Federal Court (Filed 12/8/09; Doc. No. 8).

9:11 a.m. Argument by Mr. Elden.

9:30 a.m. Argument by Mr. Liebman.

Motion to Dismiss tendered to the Court.

10:02 a.m. Further argument by Mr. Liebman. Questions by the Court.

10:08 a.m. Further argument by Mr. Elden.

Comments by the Court.

**10:21 a.m. Court in recess.**

**10:52 a.m. Court in session.**

Evidentiary argument heard on Plaintiff's Motion For Temporary Restraining Order And Preliminary Injunction And Request For Forthwith Hearing (Filed 12/7/09; Doc. No. 5).

10:54 a.m. Opening statement by Mr. Liebman.

11:15 a.m. Plaintiff's witness, David Fetter, called and sworn.  
Direct examination begins by Mr. Liebman.

**Plaintiff's Exhibit 17 offered and admitted.**

11:34 a.m. Continued direct examination by Mr. Liebman.

**Plaintiff's Exhibit 3 offered.**

Objection stated by Mr. Miller.

11:38 a.m. Continued direct examination by Mr. Liebman.

**Plaintiff's Exhibit 3 is admitted with specified limitations.**

11:39 a.m. Continued direct examination by Mr. Liebman.

**Plaintiff's Exhibit 11 offered and admitted.**

11:43 a.m. Continued direct examination by Mr. Liebman.

11:48 a.m. Objection by Mr. Miller regarding testimony. Response by Mr. Liebman.

Continued direct examination by Mr. Liebman.

**Plaintiff's Exhibit 12 offered and admitted.**

11:49 a.m. Continued direct examination by Mr. Liebman.

11:50 a.m. Objection by Mr. Miller regarding testimony. Response by Mr. Liebman.  
Questions by the Court. Objection overruled.

11:51 a.m. Continued direct examination by Mr. Liebman.

11:55 a.m. Objection by Mr. Miller regarding testimony. Response by Mr. Liebman.  
Comments by the Court. Overruled.

11:57 a.m. Continued direct examination by Mr. Liebman.

11:59 a.m. Discussion regarding remaining time and evidence schedule.

**12:04 p.m. Court in recess.**

**1:09 p.m. Court in session.**

Further discussion regarding time usage issues.

1:12 p.m. David Fetter, recalled to the stand for continued direct examination by Mr. Liebman.

**Plaintiff's Exhibit 30 offered and admitted.**

1:13 p.m. Continued direct examination by Mr. Liebman.

**Plaintiff's Exhibit 16 offered and admitted.**

1:15 p.m. Continued direct examination by Mr. Liebman.

Witness excused.

1:23 p.m. Defendant's witness, Mike Apker, called and sworn.  
Direct examination begins by Mr. Miller.

1:58 p.m. Objections by Mr. Liebman. Sustained.

**1:59 p.m. Defendant's exhibits 1-34 offered (attached to declaration).**

Objection.

**Defendant's exhibits 36, 38, 39, 42, 43, 44, 45, 46, and 47 offered and admitted.**

**Defendant's exhibits 1-34 offered and admitted.**

**Defendant's exhibit 35 offered and admitted.**

2:10 p.m. Cross examination begins by Mr. Liebman.

**ORDERED: Defendant's request that Mr. Liebman not interrupt the witness during testimony is GRANTED.**

2:17 p.m. Continued cross examination by Mr. Liebman.

Witness excused.

2:22 p.m. Witness, Mr. David Fetter, recalled for cross examination by Mr. Elden.

Witness excused.

2:31 p.m. Closing argument by Mr. Elden.

2:45 p.m. Closing argument by Mr. Liebman. Questions by the Court.

2:55 p.m. Comments and rulings by the Court.

**2:56 p.m. Court in recess.**

**3:10 p.m. Court in session.**

Comments and rulings by the Court.

**ORDERED: Plaintiff's Motion For Temporary Restraining Order And Preliminary Injunction And Request For Forthwith Hearing (Filed 12/7/09; Doc. No. 5) is DENIED as specified.**

**ORDERED: Defendant's Motion and Memorandum of Law in Support of Its Motion To Transfer This action To tHe United States District Court For The Northern District Of Illinois Pursuant To 28 U.S.C.§ 1404, or, In The alternative, Dismiss This Action So It Can Be Re-filed In That District As A Compulsory Counterclaim (Filed 1/14/09; Doc. No. 11); and Plaintiff's Motion Preliminarily Enjoin Envestnet Asset Management, Inc. From Further Proceeding In Illinois Federal Court (Filed 12/8/09; Doc. No. 8) are taken UNDER ADVISEMENT.**

**3:24 p.m. COURT IN RECESS**

Hearing concluded.

Total time in court: 4 hours, 28 minutes.