

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17-CVS-386**

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group, Defendants seemingly lost interest in the sponsorship. Immediately following the end of the 2016 race season, Defendants concocted a long list of fictitious reasons to try to justify terminating the contract, and then terminated the contract with two years and over \$30 million remaining owed to SHR.

b. Defendants/Counterclaim Plaintiffs' (collectively "Nature's Bakery") Perspective:

Nature's Bakery is a family-owned fig and fruit bar manufacturer based in Nevada. In 2015, SHR promised it could become the exclusive sponsor of Danica Patrick and SHR's No. 10 car for NASCAR. Nature's Bakery would be one of the smallest, if not the smallest, lead sponsor in NASCAR history. In exchange, SHR and Ms. Patrick were to exclusively endorse Nature's Bakery products and provide other services, including broad social media outreach to help promote the brand. Barely six months into the relationship, SHR and Patrick could not or would not fulfill their obligations under the Agreement. Ms. Patrick was endorsing confusingly similar brands and products, and SHR was unable to obtain her cooperation. Later, Nature's Bakery would learn that it had been misled and that SHR, in fact, had no right or ability to determine Ms. Patrick's performance under the parties' Agreement. By mid-2016, Nature's Bakery understood that the relationship was failing. None of the promised boost in sales had come to fruition and the family business was losing significant sums of money. In good faith, Nature's Bakery brought these concerns to SHR and sought to work to transfer and sell races, including for the entire 2017 and 2018 seasons. Those efforts were rebuffed and largely ignored and Nature's Bakery ultimately exercised its contractual rights to terminate for cause. Since then, the company has sought to help SHR find replacement sponsors, which would moot all or

most of this case. SHR, however, has been unwilling to use commercially reasonable efforts to find replacement sponsors or to mitigate with Ms. Patrick. SHR also has refused Nature's Bakery's requests to provide meaningful mitigation information as part of that process. At trial, Nature's Bakery will seek, *inter alia*, to void the Agreement based on SHR's misrepresentations and for declaratory relief that it owes no further money to SHR based on SHR's own breaches and failures to mitigate.

2. Initial Motions.

a. Motions Related to SHR's Complaint

- i. Nature's Bakery plans to file a motion for judgment on the pleadings on SHR's Complaint within forty-five (45) days of the entry of the CMO.

b. Motions Related to Nature's Bakery's Counterclaims

- i. Subject to further discovery, Nature's Bakery contemplates filing a motion to amend its Counterclaims to assert additional allegations or counterclaims, and/or to add additional parties. Because the contemplated amendments depend on discovery not yet obtained from SHR and third parties, including Ms. Patrick, Nature's Bakery respectfully requests that it be permitted the opportunity to amend at any time within three (3) months of the entry of the Case Management Order ("CMO").
- ii. SHR instead would like for Defendants to file any motion(s) to amend within thirty (30) days of the entry of the CMO, so that pleadings can be closed and early dispositive motions can be filed to (hopefully) whittle down the issues to be decided in the case. SHR does not know whether it will object to a

proposed amended pleading (if any) until its counsel has reviewed the proposed pleading.

- iii. SHR plans to file a motion for judgment on the pleadings as to all or most of the counterclaims asserted by Defendants, for the various reasons set forth in the affirmative defenses filed by SHR. SHR plans to file its Rule 12(c) motion within forty five (45) days of receiving confirmation that no motion to amend is forthcoming, or the filing of any amended pleading (if such motion is granted).¹

3. Discovery.

- a. Proposed Discovery Schedule: The parties generally agree that seven (7) months of fact discovery (from entry of the CMO), followed by three (3) months of expert discovery is likely sufficient. One open item to discuss with the Court relates to evidence concerning mitigation of damages. In theory, mitigation efforts may continue until close to the end of the 2018 race season, which is approximately twenty (20) months from the date of this filing. The parties have differing views as to whether fact discovery, at least with respect to mitigation, should remain open through the 2018 race season.
- b. Document Production Protocol: Unless otherwise agreed by the parties, documents shall be produced as kept in the ordinary course of business as follows:
 - i. Production of electronically stored information (“ESI”), including emails, should be handled as follows:

¹ This is to save unnecessary time and expense associated with moving to dismiss all or part of a pleading that may ultimately be superseded or withdrawn.

1. All documents kept as ESI will be produced in a “converted image” format or native format as set forth herein. Documents will be produced as single page Group IV TIFF (tagged image file format) images with corresponding document level text files or native format as set forth herein. The production will include an image level load file (.opt; .log) referencing each image in the production, as well as a document level data file (.txt; .dat). The proposed fields to be included in the data file are attached as Exhibit A.
 2. Both sides will produce Microsoft Excel spreadsheets, audio and video files, database files or other files which cannot be reasonably converted to an image file, in native format. All other electronic documents may be produced as image files.
 3. Other metadata or documents will be produced by agreement between the parties and, where the parties do not agree, pursuant to Court order.
- ii. Production of hard copy documents should be handled as follows: The parties agree to produce hard copy documents as they are kept in the ordinary course of business.

c. Limits on Written Discovery and Depositions:

- i. The parties have agreed to an initial round of written discovery in which SHR and Nature’s Bakery (*i.e.*, the collective group of Defendants/Counterclaim Plaintiffs) cannot serve or be served with more than twenty-five (25) interrogatories (including distinct sub-parts) or requests for admission. Should any side wish to serve additional interrogatories or requests for admission, the

parties shall meet and confer, no earlier than July 1, 2017, regarding the possibility of either side serving no more than fifteen (15) additional interrogatories or requests for admission.² If the parties are unable to reach agreement regarding the number of interrogatories and/or requests for admission in excess of twenty-five (25) that may be served, the side requesting leave to serve additional written discovery shall have the burden of persuading the Court that good cause exists to serve the proposed additional discovery.

- ii. The parties have agreed to the presumptive limit of twelve (12) fact depositions of seven (7) hours each for each side. However, the parties wish to modify these presumptive limits to allow for up to three (3) depositions (including, expert depositions) taken by either side, to exceed the seven hour limit by up to five (5) additional hours each, if the attorney taking the deposition in good faith believes that additional time is necessary to complete the deposition. In each instance in which a deposition exceeds seven (7) hours, the total number of presumptive fact deposition hours (84 hours) shall be reduced accordingly (*i.e.*, if SHR's first noticed deposition lasts 12 hours, SHR shall have 72 deposition hours left). Absent other agreement, depositions shall be taken in the city or county where the witness resides.

- d. Privilege Logs: The parties have agreed that privilege logs will contain the following headings and information: (1) Document identifier (either bates number for a

² The parties served written discovery prior to the Case Management Meeting, and entered into a written stipulation to govern the reissuance of that discovery to comport with this agreement, along with a further stipulation as to the date by which all parties will respond to that discovery.

redacted document or a placeholder id), (2) Date (date sent or date of document, depending on doc format); (3) Sender (or author); (4) Recipient (if applicable, including copies and blind copies), (4) Privilege type (attorney client communication or work product), and (5) description.

i. SHR's position is that materials arguably subject to the attorney client privilege or attorney work product doctrine which were created, sent or received after December 19, 2016 (the date of Defendant's complaint letter to SHR) need not be logged, but materials of that nature prepared before December 19, 2016 should be logged.

ii. Nature's Bakery's position is that materials subject to the attorney client privilege between the parties and their respective counsel of record in this action and attorney work product by the parties' counsel of record in this action need not be logged.

e. Inadvertent Waiver of Privileged Materials: The Court has entered a Consent Confidentiality and Protective Order that covers this issue.

f. Expert Discovery: The parties have agreed to three (3) months of expert discovery (beginning at the close of fact discovery), as follows: The parties shall provide expert disclosures on issues for which they have the burden of proof within forty-five (45) days of the close of fact discovery; the parties shall provide rebuttal expert disclosures within forty-five (45) days thereafter; and the parties shall provide surrebuttal expert disclosures within forty-five (45) days thereafter. The parties shall produce with their expert disclosures written expert reports of no greater than ten (10) double spaced, typed pages, excluding exhibits. Except as set forth above, the parties

agree to abide by the requirements of Fed. R. C. P. 26(a)(2) with respect to expert disclosures. The parties shall, in good faith, make their disclosed experts reasonably available to be deposed throughout the expert discovery period.

- g. Other Discovery Issues: The parties have completed their full discussion of discovery management, except as related to an ESI protocol, as noted above, and with respect to discussing search terms that the parties may agree on to reduce the burden on each side of collecting and reviewing ESI for production.

4. Service and Filing Deadlines.

- a. Service by email: The parties agree to service by email of all documents required to be served in this case.
- b. Extension of 5:00 p.m. e-filing deadline: The parties agree to extend the deadline for e-filing to 11:59 p.m. EST on the date any such document must be filed or served.

5. Dispositive motions deadline.

- a. The parties anticipate exchanging voluminous documents and information during the discovery phase of the case, including a large amount of ESI. Accordingly, the parties agree that it would be appropriate for dispositive motions to be filed within sixty (60) days after the close of expert discovery.

6. Trial date.

- a. SHR believes the trial date should be set any time after summary judgment briefing is complete.
- b. Nature's Bakery believes mitigation-related evidence regarding the 2018 race season, which may not be available until near the close of the 2018 race season, will be

material to trial in this matter. Nature's Bakery requests that the trial date should be set for shortly after the 2018 race season ends.

- 7. Confidentiality.** The Court has entered a Consent Confidentiality and Protective Order, which resolves the parties' respective present concerns regarding confidentiality.
- 8. Mediation.** The parties have agreed to hold a mediation with David Hamilton on April 12, 2017. If unsuccessful, the parties agree to hold a second mediation which shall occur within thirty (30) days after all summary judgment motions and briefs have been filed with the Court.
- 9. Special Circumstances.** There are no class allegations, derivative claims, or related proceedings at issue in this matter.
- 10. Referees.** At present, the parties do not believe a referee will be necessary. However, the parties have discussed the possibility of seeking a third party's assistance (perhaps a referee), with respect to transmitting and safe-keeping information related to mitigation-efforts.
- 11. Status Conferences.** Pursuant to Business Court Rule 9.3, the Court has scheduled a Case Management Conference for May 17, 2017 at 3:00pm EST.
- 12. Potential cost and time requirements of litigation.** The undersigned counsel certify that they have each conferred with their respective client(s) and provided a good-faith estimate of the potential cost and time requirements of this litigation.
- 13. Other matters.** Except as already identified above, the parties are unaware of any additional matters significant to case management.

Respectfully submitted this 7th day of April, 2017.

JAMES, MCELROY & DIEHL, P.A.

/s/ Adam L. Ross

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individually*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Joint Case Management Report** has this date been served upon Defendants/Counterclaim Plaintiffs' counsel by e-filing it with the Court's Electronic filing and service system.

This the 7th day of April, 2017.

JAMES, McELROY & DIEHL, P.A.

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