

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

CHAOTIC LABZ, INC.

PLAINTIFF

v.

No. 4:18-cv-75-DPM

SDC NUTRITION, INC.

DEFENDANT

ORDER

Chaotic Labz, Hooten, and his involved business entities respectfully ask the Court to reconsider two parts of the recent Orders. The Court has done so.

The Court stands by its punitive-damages ruling on the conversion claim about the approximately \$18,000 deposit. Taken in the light most favorable to the Chaotic plaintiffs, the record shows miscommunication, confusion, and then a stand-still based counsel's advice. *Doc. 31-6 at 30-33; Doc. 34 at 9*. Hooten could only speculate about SDC's intentions. *Doc. 34 at 10*. All this does not add up to what Arkansas law requires for punitive damages for a conversion. ARK. CODE ANN. § 16-55-206; *City National Bank of Fort Smith v. Goodwin*, 301 Ark. 182, 188-189, 783 S.W.2d 335, 338 (1990).

The Court likewise declines to allow Palumbo's belated designation as an expert. The Chaotic plaintiffs' deadlines for expert disclosures were in February and April 2019. Palumbo was deposed — as a lay witness. The parties and the Court have done much work on

discovery and motions. While the trial has been put off to December 2020, no sufficient justification has been offered for Palumbo's belated designation and it would prejudice SDC. *Vanderberg v. Petco Animal Supplies Stores, Inc.*, 906 F.3d 698, 703 (8th Cir. 2018). As the Chaotic plaintiffs point out, SDC has a sealing expert, which reduces the potential prejudice. But, as SDC rejoins, Palumbo's designation now would set in train another deposition of him, another round of motions, and the prospect of unfair gap-filling testimony. The case stands ready for trial. In fairness and for efficiency, we should go forward on the existing record.

Motion to reconsider, *Doc. 59*, denied.

So Ordered.

D.P. Marshall Jr.

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United States District Judge

28 April 2020