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Attorneys for Defendants  
BPI SPORTS, LLC, IMAGE SPORTS, LLC  
and BE POWERFUL, LLC

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NICHOLAS JABER, on behalf of himself,  
all others similarly situated and the general  
public,

Plaintiff,

v.

BPI SPORTS, LLC, IMAGE SPORTS, LLC  
and BE POWERFUL, LLC,

Defendants.

CASE NO.: 3:16-cv-05355-MMC

Hon. Maxine M. Chesney  
Courtroom 7, 19<sup>th</sup> Floor

**UNOPPOSED REQUEST FOR AN  
ORDER SHORTENING TIME ON  
DEFENDANTS' FORTHCOMING  
MOTION TO STAY DISCOVERY  
PENDING RULING ON DISPOSITIVE  
MOTION TO DISMISS; ~~PROPOSED~~  
ORDER**

Action Filed: September 19, 2016  
Trial Date: None set.

Pursuant to Civil Local Rule 6-2, Defendants BPI Sports, LLC, Image Sports, LLC, and Be Powerful, LLC (“Defendants”) hereby request, which request Plaintiff does not oppose, an Order shortening time for briefing and resolution of Defendants’ forthcoming motion to stay discovery pending resolution of Defendants’ dispositive motion to dismiss, scheduled to be heard on January 20, 2016. The salient fact are as follows:

WHEREAS Plaintiff Nicholas Jaber (“Plaintiff”) filed the Complaint in this Action, Dkt. No. 1, on September 19, 2016;

WHEREAS Defendants accepted service on September 22, 2016, Dkt. No. 6;

WHEREAS the case was initially assigned to the Honorable Magistrate Judge Kandis A. Westmore, Dkt. No. 2;

WHEREAS Magistrate Judge Westmore issued an Initial Case Management Scheduling Order on September 20, 2016, and scheduled the Initial Case Management Conference for December 20, 2016, Dkt. No. 3 at 2;

WHEREAS in that Order, Magistrate Judge Westmore set a deadline of November 29, 2016 for the parties to conduct a Federal Rule of Civil Procedure 26(f) conference, Dkt. No. 3 at 2;

WHEREAS although Defendants declined to proceed in front of a Magistrate Judge, Dkt. No. 14, the Clerk’s Order reassigning the case did not vacate Magistrate Judge Westmore’s previously set deadlines, Dkt. No. 16 (“Other deadlines such as those for ADR compliance and discovery cutoff also remain unchanged.”);

WHEREAS the parties complied with Magistrate Judge Westmore Rule 26(f) conference deadline and conducted the conference on November 28, 2016, Declaration of Daniel S. Silverman (“Silverman Decl.”) at ¶ 2;

WHEREAS shortly thereafter, the case was reassigned to Your Honor, Dkt. No. 16;

WHEREAS on November 21, 2016, prior to the parties’ Rule 26(f) conference, Defendants moved to dismiss the Complaint in its entirety, Dkt. No. 17;

WHEREAS Plaintiff’s opposition to that motion is due on Monday, December 5, 2016, and Defendants’ reply is due on Monday, December 12, 2016, Dkt. No. 17;

1 WHEREAS the motion to dismiss is set for hearing on January 20, 2017, Dkt. No. 17;  
2 WHEREAS on November 29, 2016, the day after the parties conducted their Rule 26(f)  
3 conference, Plaintiff served Defendants with several sets of discovery requests, including 51  
4 requests for admission and over 70 requests for production of documents on each of the three  
5 Defendants, and 10 interrogatories on Defendant BPI Sports, LLC, Silverman Decl. at ¶ 3;

6 WHEREAS Defendants' responses are currently due January 3, 2017, Silverman Decl. at  
7 ¶ 7;

8 WHEREAS on November 30, 2016, Your Honor issued a Case Management Scheduling  
9 Order, setting the Initial Case Management Conference for February 24, 2017, Dkt. No. 26;

10 WHEREAS Defendants contend that pursuant to the Federal Rules of Civil Procedure,  
11 the parties would not have had to conduct a Rule 26(f) conference, triggering discovery, until  
12 February 3, 2017, *see* Fed. R. Civ. P. 26(f)(1) ("the parties must confer... at least 21 days before  
13 a scheduling conference is to be held");

14 WHEREAS shortly after receiving the Court's Case Management Conference Order on  
15 November 30, 2016, Defendants reached out to Plaintiff, and proposed that the parties stipulate  
16 to stay discovery until Your Honor resolves the pending motion to dismiss the Complaint, in  
17 order to conserve the parties' resources, as the motion to dismiss is dispositive of the case,  
18 Silverman Decl., ¶ 4, Ex. A at 6-7;

19 WHEREAS Plaintiff's counsel refused to agree to a stay of discovery, Silverman Decl., ¶  
20 4, Ex. A at 6;

21 WHEREAS when Plaintiff refused, Defendants then informed Plaintiff that they would  
22 be moving to stay discovery, Silverman Decl., ¶ 5, Ex. A at 5;

23 WHEREAS Defendants' regularly noticed motion to stay would be moot if not heard on  
24 shortened time, in that Defendants' responses to Plaintiff's discovery requests would be due  
25 before the motion could be briefed and resolved, Silverman Decl., ¶ 7;

26 WHEREAS on December 2, 2016, Defendants' counsel reached out to Plaintiff's counsel  
27 to inquire if he would agree to have the motion heard on shortened time, Silverman Decl., ¶ 6,  
28 Ex. A at 3;

WHEREAS Plaintiff's counsel agreed to have the motion heard on shortened time, conditional on reduced page lengths for the briefs: 10 pages for the motion, 10 pages for the opposition, and 5 pages for reply, which condition Defendants' counsel agreed to, Silverman Decl., ¶ 6, Ex. A at 1;

WHEREAS no previous time modifications have been requested in this case to date; and

WHEREAS the time modification would not have any effect on the schedule of the case, and would simply allow the parties to avoid wasting of resources in preparing responses to Plaintiff's discovery requests should Your Honor grant Defendants' motion to stay discovery;

**WHEREFORE, IT IS SO ORDERED THAT:**

Defendants' motion to stay discovery and opening brief in support of same, not to exceed 10 pages, will be due December 8, 2016;

Plaintiff's opposition brief, not to exceed 10 pages, will be due December 13, 2016;

Defendants' reply brief, not to exceed 5 pages, will be due on December 16, 2016; and

Defendants agree to waive oral argument on the motion unless the Court deems a hearing necessary and helpful to the Court.

Respectfully submitted,

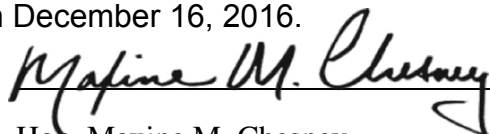
December 5, 2016

**VENABLE LLP**

By: /s/ Daniel S. Silverman  
Daniel S. Silverman (SBN 137864)  
*Attorneys for Defendants BPI Sports, LLC,  
Image Sports, LLC, and Be Powerful, LLC*

**IT IS SO ORDERED.** It is further ordered that defendants' reply brief, not to exceed 5 pages, will be due no later than noon on December 16, 2016.

Date: December 5, 2016

  
Hon. Maxine M. Chesney