



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 HEDGEYE RISK MANAGEMENT, LLC, :
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 Plaintiff, :
 :
 - against - :
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 DARIUS DALE, et al. :
 :
 Defendants. :
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21-CV-3687 (ALC) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves Defendants’ motion to preclude Plaintiff Hedgeye from pursuing a claim for breach of the assignment of rights provision based on the “monthly quads” model (as alleged in Paragraphs 150 and 276 of the Fourth and Fifth Amended Complaints) as a sanction for previously failing to disclose that basis during fact discovery, which has been closed since March 30, 2023. Having considered the parties’ submissions (see Dkt. 671 and 678) and all relevant prior proceedings, the Court finds that (1) Hedgeye knew since at least April 2021 that Defendant 42 Macro provides monthly quad forecasts; (2) Hedgeye failed to disclose the monthly quads model as a basis for claiming breach of the assignment of rights provision in responding to interrogatories; (3) Hedgeye first disclosed its claim based on the monthly quads model when it filed its Fourth Amended Complaint in response to the Court’s ruling on Defendants’ motion to dismiss, which ruling dismissed Hedgeye’s claim for breach of the assignment clause without prejudice to repleading to explain how Defendants allegedly violated the assignment clause; (4) Hedgeye’s failure to disclose its monthly quads model theory during fact discovery prejudiced Defendants by depriving them of the opportunity

to question fact witnesses, and subsequently experts, about the matter; and (5) while the Court would be within its discretion to preclude Hedgeye from proceeding with the claim, there are less drastic sanctions that can adequately address the prejudice to Defendants; namely, providing Defendants with the opportunity for targeted discovery on the matter. Accordingly, Defendants' motion is granted in part and denied in part as follows:

1. Hedgeye may proceed with the monthly quads model claim.
2. Defendants may serve up to three interrogatories concerning the claim, which Hedgeye shall answer in detail within two weeks of service of the interrogatories.
3. At Defendants' option, Defendants may depose Keith McCullough for up to one-and-a-half hours on the subject of the monthly quads model claim; and, Defendants may proceed remotely (by telephone or video) or in-person at their choosing.
4. Defendant' request for fees and costs incurred "in opposing this aspect of Hedgeye's Fourth and Fifth Amended Complaints" is denied, except that Hedgeye shall pay for the court-reporter costs for Mr. McCullough's deposition in the event Defendants elect to depose him.

The Clerk of Court is respectfully directed to terminate the motion at Dkt. 671.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: June 4, 2024
New York, New York

Copies transmitted this date to all counsel of record.