

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Park Ridge Sports, Inc.,)	
an Illinois Not For Profit Corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	
Park Ridge Travel Falcons,)	Civil Action No. 20-cv-02244
an Illinois Not For Profit Corporation;)	
Timothy Walbert, James Purcell, Jeffrey)	
Kilburg, and Lou Karnezis, individuals)	
)	
Defendants.)	Jury Trial Demanded
_____)	
)	
James Purcell,)	
Counter-Plaintiff,)	
)	
and)	Hon. Ronald A. Guzman
)	
)	
Horizon Therapeutics USA, Inc., a)	
Delaware Corporation,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
Park Ridge Sports, Inc.,)	
)	
Counter-Defendant and)	
Third-Party Defendant.)	

PARK RIDGE SPORTS INC.'S MOTION FOR PROTECTITVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), Plaintiff Park Ridge Sports, Inc. respectfully submits the following motion for protective order to prevent the production of documents requested in the non-party subpoena issued by Defendants Park Ridge Travel Falcons, Timothy Walbert, James Purcell, Jeffrey Kilburg, and Lou Karnezis on October 29, 2020, to JPMorgan Chase Bank, N.A., attached hereto as Exhibit 1.

I. INTRODUCTION

Defendants have issued an overly broad and invasive subpoena for documents to Plaintiff's bank, JPMorgan Chase Bank, N.A. ("Chase Bank"), in an attempt to harass Plaintiff by going on a fishing expedition. The Court should issue a protective order preventing the production of the subpoenaed documents because Defendants' subpoena seeks irrelevant documents that are also not proportional to the needs of this case. For example, Defendants seek documents from a time period that has nothing to do with the claims and defenses asserted in this case. Additionally, Defendants needlessly seek additional financial documents despite the fact that Plaintiff has already provided them with the documents showing that Plaintiff did in fact buy the helmets, equipment, and jerseys that Defendants allege their donated funds were supposed to be used for. *See* Dkt. 39 (Amended Counterclaim and Third-Party Complaint) at ¶¶ 9-15. Furthermore, the amount in controversy in this case is minimal, and Plaintiff's finances have nothing to do with the issue that is central to this case—did Defendants steal Plaintiff's storied mark, the "Park Ridge Falcons"?

II. BACKGROUND

Since 1967, Plaintiff, Park Ridge Sports, Inc., has called its traveling youth football teams the "Park Ridge Falcons." *See, e.g.*, Exs. 2 (1970 team photo of the "Pee Wee Traveling Team Park Ridge Falcons," including the same falcon logo used today by the Park Ridge Falcons); 3 (newspaper article from 1973 covering the pee-wee age group of the Park Ridge Travel Falcons, which included Jim Toulon, beating North Austin 12-0); 4 (1983 team photo of the Park Ridge Falcons). Due to Plaintiff's continued and exclusive use of the mark, Plaintiff acquired an ownership right to that mark. This lawsuit is all about protecting it.

On or around March 23, 2020, Defendants Purcell, Walbert, Kilburg, and Karnezis formed Defendant Park Ridge Travel Falcons. Formerly, Defendants Purcell, Walbert, Kilburg, and

Karnezis were either board members of Plaintiff or coaches of Plaintiff's travelling football team, the Park Ridge Falcons. On March 27, 2020, the same day Defendant Purcell resigned from Plaintiff's Board of Directors, Defendants caused counsel to file three intent-to-use-based federal trademark applications with the USPTO. Those applications were for different iterations of the Park Ridge Falcons, specifically, "Park Ridge Falcons," "PR Travel Falcons," and "Park Ridge Travel Falcons" plus design.

Plaintiff instituted this lawsuit on April 9, 2020 and then amended its Complaint on May 13, 2020, raising claims under Section 43(a) of the Lanham Act, violations of the Illinois Deceptive Trade Practices Act, a claim for unfair competition, and a breach of fiduciary duty claim against Defendants Purcell, Walbert, and Karnezis.

Defendant Purcell subsequently counterclaimed against Park Ridge Sports Inc. He baselessly alleges that Plaintiff breached its contract with him by not spending his \$2,600 donation on football jerseys. Plaintiff unequivocally denies this allegation. As discovery has shown, Plaintiff in fact spent Defendant Purcell's \$2,000 (not \$2,600) donation on football jerseys. *See* Exs. 5 (Jamie Purcell Check No. 1560); 6 (10/12/2018 Winning Streak Jersey Invoice); 7 (March 20, 2019 Credit Card Statement Proving Payment of Winning Streak Jersey Invoice); 8 (Riddell Statement for Jerseys, Pants, and Belts). Moreover, Defendant Purcell's donation of \$500 to Plaintiff for "Football 4 Families Flag Fest", which, along with the rest of the nearly \$7,500 raised, went to families in need.¹ *See* Ex. 24 (Jamie Purcell Check No. 1312). On June 23, 2020, Horizon Therapeutics USA, Inc. ("Horizon") (a proxy for Defendant Walbert) filed a third-party complaint against Plaintiff. Like Purcell, Horizon groundlessly asserted a claim for breach of contract, alleging that Plaintiff breached its contract with Horizon by not spending a \$50,000 donation on

¹ In Defendant Purcell's Interrogatory Response Number 1, he asserts that he made donations totaling \$2,600 in three installments: (1) \$2,000 (Check No. 1560), (2) \$500 (Check No. 1312) and (3) \$100 (Check No. 1122). Plaintiff has been unable to locate Check No. 1122, and Defendants have yet to produce the same.

football helmets and equipment. This is false, on two levels. Horizon did not earmark or otherwise restrict its donation to Park Ridge Sports and therefore no contract exists. And, even if it did, discovery has shown that Plaintiff did in fact spend the \$50,000 donation on football helmets and equipment. *See* Exs. 9 (Horizon Check No. 5692); 10 (12/22/2018 Equipment Invoice); 11 (01/03/2019 Equipment Invoice); 12 (1/12/2019 Equipment Invoice); 13 (01/21/2019 Equipment Invoice); 14 (01/29/2019 Helmet Invoice); 15 (3/22/2019 Practice Equipment Invoice); 16 (04/02/2019 Helmet Invoice); 17 (05/03/2019 Helmet Invoice); 18 (08/12/2019 Helmet Invoice); 19 (08/27/2019 Helmet Invoice); 20 (09/25/2019 Helmet Invoice); 21 (08/31/2020 Helmet Invoice); 22 (Expenditures Summary).

On October 29, 2020, seeking to find what they will not, Defendants issued an overly invasive subpoena of documents to Chase Bank for the following bank records of Plaintiff:

1. Produce all bank statements or credit card statements, including copies of canceled checks, for PRSI from January 1, 2014 to the present.
2. Produce all documents referring to any deposits into any account held by PRSI from January 1, 2014 to the present.
3. Produce documents referring to any transfer or withdrawal from any account held by PRSI from January 1, 2014 to the present.
4. Passbooks from all banks at which PRSI maintains or maintained an account from January 1, 2014 to the present.
5. All documents which refer or relate to all bank accounts, certificates of deposit and the like from any bank or savings and loan institution at which PRSI maintains or maintained an account or has or had an interest; and which contains the name of the bank or institution, account number, and amount on deposit from January 1, 2014 to the present.

III. LEGAL AUTHORITY

Parties “have standing to seek a protective order under Rule 26 to limit discovery from a third party, and the relevance and proportionality limits in Rule 26 that guide the proper scope of discovery apply with equal force to nonparty discovery under Rule 45.” *DeLeon-Reyes v. Guevara*, 1:18-CV-01028, 2020 WL 3050230, at *3 (N.D. Ill. June 8, 2020) (citation omitted); *see also Buonavolanto v. LG Chem, Ltd.*, 18 C 2802, 2019 WL 8301068, at *2 (N.D. Ill. Mar. 8, 2019) (“[T]he limits set forth under Rule 26(b) apply to non-party subpoenas under Rule 45.”). “The court can issue a Rule 26(c) protective order to enforce limits on discovery provided by Rule 26(b).” *Noble Roman's, Inc. v. Hattenhauer Distrib. Co.*, 314 F.R.D. 304, 308 (S.D. Ind. 2016).

IV. ARGUMENT

Defendant Purcell and Third-Party Plaintiff Horizon allege contracts exist between them and Plaintiff. However, they make such an allegation despite the fact that they did not expressly state or provide in writing how the funds were to be used. Nor did Defendants Purcell and Walbert, as board members, raise the issue during a single board meeting that occurred during the more than 12 months after such donations were made. And, as the money was being spent by the board during 2019 and early part of 2020, Defendants Purcell and Walbert did not object to the use of the funds. To put it simply, Defendants and Horizon have zero evidence that a contract exists, that is, besides their belated, manufactured attempt to put pressure on Plaintiff by making such an allegation.

Even if contracts did exist, the contracts would be that in exchange for the donations, Plaintiff agreed to purchase helmets, equipment, and jerseys. The evidence in this case demonstrates Plaintiff did purchase helmets, equipment, and jerseys after receiving the donations:

Amount Requested	Vendor Name	Method of Payment	Reason for Request	Date Paid	Notes
\$ 2,704.00	Great Saves Sports Equipment Repair	check 3585	shoulder pad cleaning & repair (676 x \$4.50)	1/7/2019	INVOICE 2018FB02C dated 1/3/19 - \$2,704.00- Rob paid
\$ 1,744.00	Great Saves Sports Equipment Repair	check 3584	shoulder pad cleaning & repair	1/10/2020	INVOICE 2018FB02A
\$ 804.00	Great Saves Sports Equipment Repair	check 3594	shoulder pad cleaning & repair	1/15/2019	INVOICE 2018FB02D
\$ 670.00	Great Saves Sports Equipment Repair	check 3595	shoulder pad cleaning & repair	1/21/2019	2018FB02E
\$ 10,965.17	Riddell/All American Sports Corp.	check #3525	259 Helmets reconditioning inv 950824643	11/2/2018	underpaid (\$10,263.69); paid remainder 701.48 with cc on 2/28/19
\$ 1,070.00	Tackle Tube USA	PRFB CC	6 tackle tubes	3/22/2019	
\$ 10,785.43	Riddell	check 3619	051 Speedflex helmets(\$199ea)/re conditioning of 3 Speedflex helmets	6/11/2019	Invoice 950884965 \$10,443.95 and Invoice 950880842- \$341.48 applied credit of \$1053.81 from ck payment 3569/Katie mailed 6/11/19
\$ 11,372.34	Riddell	PRFB CC	50 Speedflex helmets	8/6/2019	Inv 950997611
\$ 115.20	Riddell	check 3718	special helmet for Ziga	9/11/2019	Inv 951027016
\$ 172.34	Riddell	check 3743	Helmet repair kit	10/4/2019	Inv 951057901
\$ 2,417.39	Riddell/All American Sports Corp.	check #3569	66 Helmets reconditioning inv 950861431	11/15/2018	overpaid (paid \$3471.20)- have credit of 1053.81 for 2019
\$ 7,227.09	Riddell	cc ending 1417	Reconditioning PO for 193 helmets	9/8/2020	including because approved in 2019, & ordered b4 while Walbert still on board - Inv 60415280; helmets delivered week of Aug 24,2020
\$ 5,922.00	Shoulder Pad Equipment Spend				
\$ 1,070.00	Practice Equipment Spend				
\$ 43,054.96	Helmet Equipment Spend				
\$ 50,046.96	Grand Total				

Date Requested	Amount Requested	Vendor Name	Method of Payment	Reason for Request	Requester Name	*Requisition # Issued	Requisition Approved by:	Date Paid	Notes
10/26/2018	\$ 13,940.91	Riddell/All American Sports Corp.	check 3611	includes 206.02 finance charges; inv 950744185, 950742500, 60365 942, 60365685	Garry Abezetian	1026	Rob Leach	1/9/2020	
	\$ 10,157.95	Riddell/All American Sports Corp.	check 3611	200 UA jerseys- inv 950744185					
	\$ 105.74	Riddell/All American Sports Corp.	check 3611	16 belts- inv 950742500					
	\$ 396.20	Riddell/All American Sports Corp.	check 3611	50 UA pants- inv 60365942					
	\$ 3,075.00	Riddell/All American Sports Corp.	check 3611	100 UA pants/100 belts- inv 60365685					\$500 belts/\$2575 pants
10/15/2018	\$ 2,147.00	Winning Streak	PRFB CC	100 Falcons D1 Jerseys (100 x \$20)- screening	Jeff Kilburg	0125	Jim Toulon	1/25/2019	Rob paid by cc- was overdue
	\$ 12,304.95	Jerseys							
	\$ 2,971.20	Pants							
	\$ 605.74	Belts							
	\$ 15,881.89	Grand Total							

Ex. 22; *see* Exs. 5-21. Unhappy that the evidence disproves their allegations, Defendants and Horizon now seek to go on a fishing expedition in order to harass Plaintiff and increase the burden

and expense of their claims. This is never more apparent than the fact that the subpoena of Chase Bank seeks documents dating back to January 1, 2014, which is nearly FOUR years prior to when Defendant Purcell and Horizon made the donations at issue.

Here, good cause exists for the Court to issue a protective order because Defendants' subpoena to Chase Bank seeks irrelevant documents that are also not proportional to the needs of this case. *See* FED. R. CIV. P. 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is *relevant* to any party's claim or defense *and proportional to the needs of the case* [.]"') (emphases added). As to relevance, Horizon never earmarked or otherwise restricted the donation and, therefore, the donation can be used for general purposes as needed by Plaintiff for its operations. Even more, Plaintiff has also produced the necessary documents to prove that Plaintiff did purchase the helmets, equipment, and jerseys that Defendant Purcell and Horizon now claim Plaintiff did not purchase. *See* Exs. 5-22. And, tellingly, the subpoena seeks documents dating all the way back to January 1, 2014. It is perplexing how documents prior to when the donations were made could be relevant to how the donations were spent or whether Plaintiff used the donations to purchase the helmets, equipment, and jerseys. *See, e.g., Anahuac Mgmt. v. Mazer*, 2:09-CV-01590-RLH, 2011 WL 3585475, at *4 (D. Nev. Aug. 16, 2011) ("A protective order is also entered limiting the banking records Defendants may obtain from Hand & Hand, PC Client Trust Account for the period between April 2007 and March 2008.").

Concerning proportionality, the Court may consider "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." FED. R. CIV. P. 26(b)(1). These factors side with Plaintiff. *See, e.g., Noble Roman's, Inc. v. Hattenhauer Distrib. Co.*, 314 F.R.D. 304, 312 (S.D. Ind. 2016) ("Hattenhauer's subpoenas to Privet Fund fail the proportionality test

under Rule 26(b). Therefore, the court GRANTS Noble Roman’s motion for a protective order.”). For starters, and as described, Plaintiff has already provided Defendants access to its financial documents that show it spent Defendant Purcell and Horizon’s donations in accordance with their alleged restrictions. Worse still, Defendants have already subpoenaed Plaintiff’s accounting firm, Callero & Callero, for numerous financial documents like those Defendants now seek. Ex. 23. Both facts eliminate the necessity for additional financial documentation to resolve Defendant Purcell and Horizon’s claims. In addition, the amount in controversy here is minimal. Defendant Purcell and Horizon’s alleged donations total only \$52,600. Finally, the counterclaim and third-party claim by Defendant Purcell and Horizon, respectively, are not the central issues in this action. They are groundless claims aimed to do nothing more than drag Plaintiff’s name through the mud. What is central to this case is whether Defendants stole Plaintiff’s mark—the Park Ridge Falcons, and Plaintiff’s bank records have nothing to do with that.

V. CONCLUSION

For these reasons, Plaintiff prays that the Court enter a protective order preventing production of the documents that Defendants seek to subpoena from Chase Bank.

Dated: November 5, 2020

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS,
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Local and co-counsel for Park Ridge Sports, Inc.

CERTIFICATE OF CONFERENCE

I certify that on November 5, 2020 and via telephone, I engaged in a good-faith effort to confer with counsel for Defendants regarding the relief requested herein. Defendants are opposed.

/s/ Alexander R. Hernandez
Alexander R. Hernandez

CERTIFICATE OF SERVICE

I certify that on November 5, 2020, a true and correct copy of the above document has been served via CM/ECF on all counsel of record.

/s/ Alexander R. Hernandez
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