



**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

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August 27, 2021

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**RE: *DG BF, LLC, et al. v. Michael Ray, et al.*,**  
Civil Action No. 2020-0459-MTZ

Dear Counsel,

Pending before me are Defendants' August 18, 2021 Expedited Renewed Motion to Compel and for Sanctions Against Plaintiffs,<sup>1</sup> as briefed, argued, granted in part, and taken under advisement in part;<sup>2</sup> Defendants' August 24 Motion for Sanctions for Spoliation of Evidence, as briefed;<sup>3</sup> and Defendants' August 25 letter asserting Plaintiffs have failed to comply with this Court's August 23 ruling (the

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<sup>1</sup> Docket Item ("D.I.") 212.

<sup>2</sup> D.I. 217; DI. 221; D.I. 227; D.I. 228.

<sup>3</sup> D.I. 225; D.I. 237; D.I. 242.

“Ruling”).<sup>4</sup> Also pending is third party Demeter Group Holdings, LP’s (“Demeter”) motion to quash, which seeks the partial vacatur of that Ruling in connection with imaging Demeter’s server.<sup>5</sup> The pretrial conference is scheduled for September 7; trial is scheduled for September 15 to 17.

In the August 23 Ruling, I found Plaintiffs in contempt, but took the remedy under advisement to consider if contempt could be remedied by an adverse inference alone, or if further sanctions, including dismissal, were warranted. Plaintiffs’ continued contumacious conduct in the four days since has convinced me the only adequate remedy is dismissal.

It will take me some time to formalize the explanation of my decision. For now, given the Herculean tasks that Defendants face in the days before trial due to Plaintiffs’ delay and contempt, please be advised that this matter will be dismissed and judgment will be entered in favor of Defendants. Counsel may cancel the scheduled depositions, stop document review (including of Plaintiffs’ recently produced repositories), and put pencils down in briefing the motion to quash. The pretrial conference and trial are cancelled. An order will follow.

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<sup>4</sup> D.I. 231.

<sup>5</sup> D.I. 234.

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Sincerely,

*/s/ Morgan T. Zurn*

Vice Chancellor

cc: All Counsel of Record, via *File & ServeXpress*