IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

v. MOTIF FOODWORKS, INC.,) REDACTED - PUBLIC VERSION Original Filing Data: May 16, 2023
Defendant.	Original Filing Date: May 16, 2023 Redacted Filing Date: May 23, 2023

LETTER TO THE HONORABLE WILLIAM C. BRYSON FROM JEREMY A. TIGAN SEEKING A PROTECTIVE ORDER AND AN ORDER COMPELLING PRODUCTION

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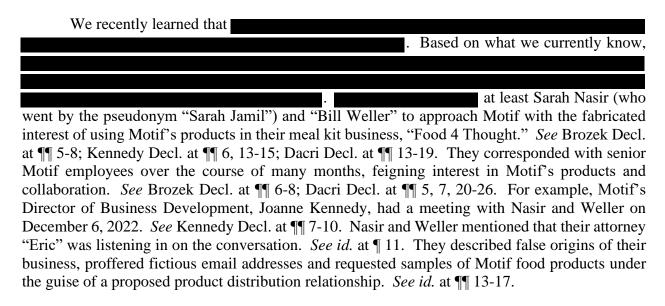
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May 16, 2023

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Attorneys for Defendant Motif FoodWorks, Inc.

I. Statement of Facts



After discovering their true affiliations, Motif ceased all communications. Kennedy Decl. at ¶¶ 25; Dacri Decl. at ¶¶ 19; Brozek Decl. at ¶¶ 8. In addition to Nasir and Weller, Motif has been subject to additional suspicious attempts to obtain information about its products. Dacri Decl. at ¶¶ 5-12; Brozek Decl. at ¶¶ 9-11. Motif now suspects

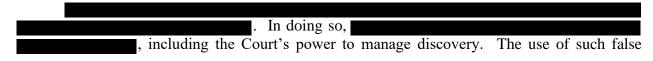
as well. On April 25, 2023, Motif

at 1. In response,

Ex. 2 at 1.

II. Protective Order Is Warranted

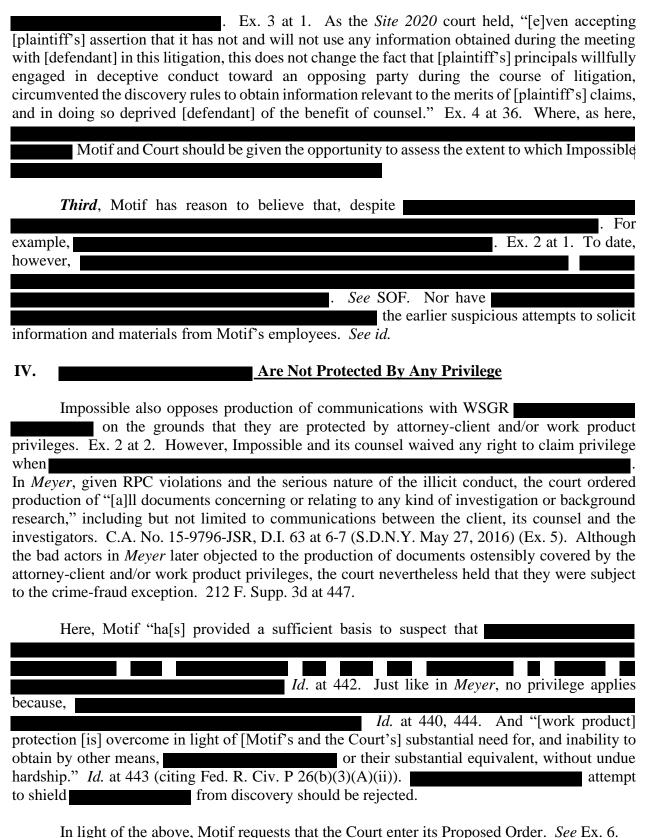
"shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter." RPC 4.2. This includes Motif's employees, who among other things are responsible for managing Motif's sales and business development (*see* SOF). *See* Delaware Lawyers' Rules of Professional Conduct at Rule 4.2, comment 7 ("In the case of a represented organization, this Rule [4.2] prohibits communications with a constituent of the organization . . . whose act or omission in connection with the matter may be imputed to the organization for purposes of civil . . . liability."). And "engag[ing] in *ex parte* communications . . . using [a] private investigator" is a "violation of RPC 4.2." *In re Complaint of PMD Enterprises Inc.*, 215 F. Supp. 2d 519, 532 (D.N.J. 2002); *see also Midwest Motor Sports v. Arctic Sales, Inc.*, 347 F.3d 693, 698 (8th Cir. 2003) ("[T]he [ABA] Rules also prohibit contact performed by an investigator acting as counsel's agent.").



¹ Herein, "RPC" refers to the both the American Bar Association and Delaware Lawyers' Rules of Professional Conduct because the cited rules appear identically in both RPC.

pretenses is alarming, unethical, and warrants a protective order. For example, in *Meyer v. Kalanick*, the Court held that a protective order was appropriate where an investigator hired by one party "made materially false statements about why he was contacting" the other party. 212 F. Supp. 3d 437, 440 (S.D.N.Y. 2016). The Court enjoined the offending party and its investigator from undertaking any further investigations. *Id.* at 450. Additionally, a protective order is warranted to ensure

	Impossible opposes a protective order based solely on
Hone	Ex. 3 at 2. But, respectfully, there is no reason to accept this representation.
Here,	
	. See SOF.
III.	Impossible Should be Compelled to Produce
	As a practical matter, Motif and the Court will only know the full extent of and what the appropriate remedies may be if
Impos	sible refuses to produce any information exchanged between either
"obxid	is (1) not relevant (Ex. 3 at 1), and (2)
OUVI	ited" by (id.).
"respo ordere but fai	Therefore, these communications are relevant to whether to Motif's employees. See onsible for the conduct of" their investigators pursuant to RPC 5.3(c) because they knowingly and or ratified (RPC 5.3(c)(1)) or knew of the conduct in advance alled take remedial action (RPC 5.3(b)(2)). Furthermore, these communications are probative either they violated RPC 8.4(a) by knowingly assisting or inducing a violation of the RPC.
demondagent. Site 2 [defending plate partner to determine the determine to determine the determine to determine the determine to determine the determine th	Second, these communications are relevant to whether In Site 2020 Inc. v. Superior Traffic Servs., "the Court ha[d] no difficulty finding by and convincing evidence that [plaintiff] acted willfully and in bad faith" based on "evidence astrating that while this litigation was pending, [plaintiff] accepted [defendant's] offer to astrate its [products] to what it thought was a potential customer" but was actually plaintiff's C.A. No. 21-63-M-DLC-KLD, D.I. 132 at 27-28 (D. Mont. March 27, 2023) (Ex. 4). The 2020 court found that "[e]mails exchanged between [plaintiff's principals] prior to adant's] product demonstration reflect that [plaintiff's principals] were both directly involved nning to have [plaintiff's agent] attend the demonstration posing as a" potential business ar. Id. at 28. All communications related to should be produced ermine [plaintiff's by its claim that]



in right of the above, Moth requests that the Court effect its Proposed Order. See Ex. 6.

Respectfully,

/s/ Jeremy A. Tigan

Jeremy A. Tigan (#5239)

Attachment(s)
Declaration of Julia Dacri
Declaration of Joanne Kennedy
Declaration of Joe Brozek

cc: Clerk of the Court (via hand delivery)
All Counsel of Record (via CM/ECF and email)