**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49**

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**YRN LLC,**

**Plaintiff,**

**– against –**

**MIGOS, LLC, QUAVIOUS MARSHALL, KIARI CEPHUS, KIRSNICK BALL, JEREL NANCE AND PIERRE THOMAS,**

**Defendants.**

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**DECISION AND ORDER**
**Index No.: 651964/2019**

**Motion Sequence No.: 001**

**O. PETER SHERWOOD, J.:**

In motion sequence 001, plaintiff moves for partial summary judgment. Plaintiff has limited the motion to a request for a declaration as to the meaning of § 11.2 (c) of the Operating Agreement (third cause of action), and a finding on the claim for breach of that provision (first cause of action). For the following reasons, the motion shall be denied, the first and third causes of action dismissed, and the request for sanctions denied.

## I. FACTS

The hip-hop group Migos is comprised of defendant performers Quavious Marshall ("Marshall"), Kiari Cephus ("Cephus"), and Kirsnik Ball ("Ball") ("Migos Performers"). Defendants Jerel Nance ("Nance") and Pierre Thomas ("Thomas") are part of the Migos management team. All five individual defendants are also members of the defendant entity Migos LLC. (Cher aff ¶ 7, Dkt. No. 34).[1] The individual defendants are not members of plaintiff, YRN LLC, as any interests they once had in that entity have been assigned to defendant Migos LLC (*see* Dkt. No. 35 at p. 1). [2]

The principal of the plaintiff entity YRN LLC is Naum Chernyavsky, also known as Norton Cher ("Cher"). Cher is in the business of apparel design, manufacturing, and distribution for

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[1] The parties have not submitted Commercial Division Rule 19-a statements (*see* 22 NYCRR Part 202.70, Rule 19-a). The following facts are taken from the parties' statements of facts as presented in their affidavits and documents submitted on the motion.

[2] The reference "Dkt. No.__") refers to the place where documents relating to this case are filed the court's electronic filing system (NYSCEF).

musical groups. For example, Cher partnered with Jay-Z to develop the Rocawear brand, which was ultimately sold for $250 million (Cher aff ¶ 9).

From 2013 through mid-2015, Migos produced dozens of songs and mixtapes that were popular, but had only one hit song on the Billboard Hot 100 list (*see* exhibit 5; Marshall aff ¶ 6). In and around May 2015, Cher and individual defendants agreed to go into business. According to Cher, in April 2015, the parties executed an operating agreement for YRN LLC ("Original Agreement"), which was amended and restated as of May 13, 2015 ("Agreement" Dkt. No. 103)[3]. YRN LLC was assigned the trademarks "YRN" and "Yung Rich Nation " marks (the "YRN Marks") with the goal of manufacturing and marketing apparel with the marks derived from the name of Migos' then-forthcoming song, "*Y.R.N.*" and first studio album "*Yung Rich Nation*" (Cher aff. ¶ 13), released on July 31, 2015 (Cephus aff ¶ 6, Dkt. No. 85). According to Cher, his company, DS 11, owns a 75% interest in YRN LLC, and he is its President and Chairman (Operating Agreement § 3.1[a]). The remaining 25% is owned by defendant Migos LLC. Through DS 11, Cher made a $150,000 capital contribution that was distributed to defendants (Cher aff ¶15).

Over a year later, in October 2016, Migos released a critically acclaimed single, *Bad and Boujee* which reached number 1 on the Billboard Hot 100 chart. In January 2017, Migos released the album *Culture*, which debuted at number 1 on the Billboard 200 list, which ranks the 200 most popular music albums in the United States. The album *Culture II* was released a year later, in January 2018 (Cephus ¶ 6, Dkt. No. 85). As a result, the Migos Performers gained significant fame (Cher ¶ 21).

The role of plaintiff YRN LLC was to manufacture and market apparel bearing the YRN Marks. The covered categories of products included "without limitation, clothing items in the following categories: men's, young men's, boy's [sic], infants [sic], ladies', young women's (juniors), girls', accessories, outerwear, footwear, children's wear, sportswear and T-shirts" and is referred to as International Class 25 (*id.* ¶ 16).

Section 11.2(c) of the Agreement provides as follows:

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[3]The Agreement submitted to the court is incomplete as it fails to set forth the membership interest of Migos LLC. Further, the submitted document contains a signature page bearing signatures of the individual defendants that appears to have been lifted from some other document (*see* Dkt. No. 35, page "12"). None of the individual defendants is a party to the operative Amended and Restated agreement" and none is a member of YRN LLC, although each had been a member of YRN, LLC in the past. Their individual membership interests were assigned to Migos, LLC in May 2015 (NYSCEF Doc. No. 102).

> "Each of Migos LLC, each Migos Performer and each of Jerel Nance and Pierre Thomas agrees not to, directly or indirectly produce or license (or cause to be produced or licensed) under the 'Migos' name any item of the kind produced by the Company under the Trademark"

(Dkt. No. 35, § 11.2). This provision, which had been changed from the Original Agreement, is the subject of this motion.[4] Plaintiff's position is that the provision prohibits defendants from selling competing products bearing either the "YRN" or "Migos" name, while defendants contend the provision merely prohibits them from selling competing "YRN" apparel.

Beginning in late 2016, Migos began to experience major commercial success and has become internationally known (*see* Cher aff ¶ 21, Dkt. No. 34; *see also* news article at Dkt. No. 39). In spring 2017, Migos entered into an agreement with Bravado International Group Merchandising Services, a subsidiary of Universal Music Group, to produce and market apparel bearing the "Migos" name (*see* Cher aff ¶ 22).

Plaintiff asserts four causes of action: (i) breach of contract with respect to section 11.2(c) of the Agreement; (ii) breach of contract with respect to section 11.2(a) of the Agreement; (iii) seeking declaratory judgment and an injunction prohibiting defendants from marketing apparel bearing the "Migos" name; (iv) declaratory judgment as to plaintiff's rights to the YRN Marks. This motion relates to the first and third causes of action only.

## II. STANDARD

The standards for summary judgment are well settled. Summary judgment is a drastic remedy which will be granted only when the party seeking summary judgment has established that there are no triable issues of fact (*see* CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 329 [1986]; *Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395 [1957]). To prevail, the

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[4] According to Cher, the "clause was not negotiated or even discussed between the parties prior to executing the Operating Agreements" (Dkt. No. 34, ¶ 19). Pierre Thomas, manager of Migos confirmed that "use of the 'Migos' mark was never discussed as part of the YRN clothing line and there was never any discussion that Cher would want to preclude Migos from selling or advertising clothing merchandise bearing the Migos mark as part of this deal" (Dkt. No. 81, ¶ 7). He adds that in 2013, prior to making the YRN deal, the Migos Performers had signed an agreement with Quality Control, a record company (in which according to plaintiff Thomas was the principal), giving it "an exclusive license to use the Migos mark on clothing merchandise" (*id.*, ¶ 8).

As is recited in the Agreement (Dkt. No. 35, p.1), Migos LLC acquired the membership interests previously held by the individual defendants. Defendant Migos LLC was formed by the individual defendants along side the YRN LLC transaction in or about May 2015 "for the purpose of producing and managing a clothing line in accordance with a business plan to be developed by the Managers and approved by the Members" (*see* Migos LLC Operating Agreement, Dkt. No. 102, § 3).

party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law tendering evidentiary proof in admissible form, which may include deposition transcripts and other proof annexed to an attorney's affirmation (*see Alvarez v Prospect Hosp., supra; Olan v Farrell Lines*, 64 NY2d 1092 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Absent a sufficient showing, the court should deny the motion without regard to the strength of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Once the initial showing has been made, the burden shifts to the party opposing the motion for summary judgment to rebut the prima facie showing by producing evidentiary proof in admissible form sufficient to require a trial of material issues of fact (*see Kaufman v Silver*, 90 NY2d 204, 208 [1997]). Although the court must carefully scrutinize the motion papers in a light most favorable to the party opposing the motion and must give that party the benefit of every favorable inference (*see Negri v Stop & Shop*, 65 NY2d 625 [1985]) and summary judgment should be denied where there is any doubt as to the existence of a triable issue of fact (*see Rotuba Extruders, v Ceppos*, 46 NY2d 223, 231 [1978]), bald, conclusory assertions or speculation and "[a] shadowy semblance of an issue" are insufficient to defeat a summary judgment motion (*S.J. Capelin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *see Zuckerman v City of New York, supra; Ehrlich v American Moninger Greenhouse Mfg. Corp.*, 26 NY2d 255, 259 [1970]).

Lastly, "[a] motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112 [2d Dept 2010], quoting *Scott v Long Is. Power Auth.*, 294 AD2d 348 [2d Dept 2002]).

## III. DISCUSSION

On this motion, plaintiff YRN LLC seeks a ruling on its first cause of action that defendants "are in breach of contract by continuing to license and cause to be produced and sold certain merchandise bearing the 'Migos' name in contravention of § 11.2(c) of the [YRN] Operating Agreement" and on its third cause of action declaring defendants have "a contractual obligation not to license and cause to be produced and sold such merchandise" (Br. at 25, Dkt. No. 33). Plaintiff reasons it is entitled to prevail as to both causes of action but if the court were to find that there are issues of fact that would require denial of summary judgment on the breach of contract claim, it should still prevail because the declaratory judgment claim asks only that the court

"declare the meaning of § 11.2 (c) and to find that defendants have breached it - with the latter flowing logically from a favorable ruling on the former . . . " (Reply at 11, Dkt. No. 37).

**A. Breach of Contract**

To sustain a breach of contract cause of action, plaintiff must show: (1) an agreement; (2) plaintiff's performance; (3) defendant's breach of that agreement; and (4) damages (*see Furia v Furia*, 116 AD2d 694, 695 [2d Dept 1986]). "The fundamental rule of contract interpretation is that agreements are construed in accord with the parties' intent . . . and '[t]he best evidence of what parties to a written agreement intend is what they say in their writing' . . . . Thus, a written agreement that is clear and unambiguous on its face must be enforced according to the plain terms, and extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous [internal citations omitted]" (*Riverside South Planning Corp. v CRP/Extell Riverside LP*, 60 AD3d 61, 66 [1st Dept 2008], *affd* 13 NY3d 398 [2009]). Whether a contract is ambiguous presents a question of law for resolution by the courts (*id.* at 67).

In accordance with these principles, a court should interpret a contract "so as to give full meaning and effect to the material provisions" (*Beal Savings Bank v Sommer*, 8 NY 3d 318, 324 [2007], quoting *Excess Ins. Co. Ltd. v Factory Mut. Ins. Co.*, 3 NY3d 577, 582 [2004]). "A reading of a contract should not render any portion meaningless . . . . Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose" (*id.* at 324-325, quoting *Matter of Westmoreland Coal Co. v Entech, Inc.*, 100 NY2d 352, 358 [2003]). Additionally, "[t]he court should construe the agreements so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless" (*Beal Savings Bank v Sommer*, 8 NY 3d 318, 324 [2007]) (citations omitted).

Section 11.2 is a restrictive covenant. Plaintiff claims that pursuant to the § 11.2 (c), defendants are prohibited from producing, or licensing others to produce, apparel bearing the name "Migos," even though the record shows plaintiff has no rights in that name.

In the context of the sale of a business, involving as it does the transfer of the seller's good will as a going business, the courts have been willing to set aside their "high disfavor" of agreements in restraint of trade and enforce an incidental covenant by the seller not to compete (*see Purchasing Associates, Inc. v Weitz*, 13 NY 2d 267, 271 [1963]). "This rule is grounded, most reasonably on the premise that a buyer of a business should be permitted to restrict his seller's

freedom of trade so as to prevent the latter from recapturing and utilizing, by his competition, the good will of the very business which he transferred as value" (*id.*).

These precepts provide guidance here, even though plaintiff did not purchase a going business and its good will. Instead, it bought two trademarks with the intention to exploit them in the marketing and sale of apparel which the court views as roughly equivalent to the purchase of a relatively short-lived product line, including associated good will. The trademarks had then-present value associated with a then popular song and an album containing the song, *Y.R.N.*, performed by the group Migos. Plaintiff never obtained a license to use the name Migos but expected nevertheless to profit, in part, from association of the trademarked products with the group Migos. In an effort to protect the apparel it produced from direct competition by producers of apparel with rights to sell apparel bearing the more enduring "Migos" name, plaintiff inserted § 11.2 into the Agreement its lawyers drafted.[5]

In the context of a sale of a business, a covenant not to compete will be enforced if it is reasonable in the circumstances (*see Town Line Repairs v Anderson*, 90 AD 2d 517, [2d Dept 1982]). "A covenant of this type is reasonable when it is not broader in terms of time, scope and area than is reasonably necessary to protect the buyers interest" (*id.*).

In this case, plaintiff seeks to prohibit in perpetuity the ability of the individual defendants to exploit the fruits of their efforts in a sphere never assigned plaintiff, all in the name of protecting limited trademarks from being "cannibalized." The covenants in § 2.11 that plaintiff seek to enforce would also obligate the Migos Performers "to wear garments bearing the ['YRN' or 'Yung Rich Nation' Mark] produced by . . . the Company in at least six (6) music videos per year, four (4) photo shoots per year, and at least (6) in-store signings per year with various retail parties designated by the [YRN LLC] Board." These covenants would apply "during the term of [the] Agreement," *i.e.*, either as long as YRN LLC remains in business, which the Agreement states is "in perpetuity" (*id.*, at § 2.6), or until the group disbands (*id.*, § 2.5). Merely withdrawing from membership in the Company is not an option without the consent of the Board of YRN LLC (*id.*, § 9.1[a]). The restriction is unreasonable.

The life of a popular song or music album is usually measured in weeks (*see e.g.*, Billboard Hot 100 Chart at www.billboard/charts/hot-100). A few iconic albums remain on the list for substantial periods of time, for example The Beatles' "*Abbey Road*," Michael Jackson's "*Thriller*"

[5] Defendants were represented by counsel.

and Bob Marley's "*Legend*". The vast majority fall off the list in under 50 weeks (*see e.g.* www.billboard/charts/billboard-200/2019-8-31). As of September 7, 2019, only two of the top 100 songs listed had been on the chart for more than 40 weeks. None had been on for 50 weeks. Plaintiff does not claim that the song "*Y.R.N.*" made it onto either the Billboard Hot 100 or the Billboard Hot R&B/Hip-hop songs chart. Nor does plaintiff claim the album "*Yung Rich Nation*" got onto the Billboard 200 chart. Migos' next song "*Bad and Boujee*" was released in November 2016 and, according to Cher, "quickly rose to the top of the Billboard Hot 100 list" (Cher aff, ¶ 21). By late summer 2017, that song had fallen off the chart (*see* www.billboard/charts/hot-100/2017-08-12). The group's next album, "*Culture*" "achieved significant fame, debuting at Number 1 on the Billboard 200" (*id.*). *Culture* endured for well over 50 weeks but it, too, was gone from the list by the end of 2018 (*see* www.billboard/charts/billboard-200/2018-12-29). In any event, Cher had no right to use either the "*Bad and Boujee*" or "*Culture*" name.

According to Cher, the purpose of the covenant "was to prevent [Migos] from selling Migos apparel that would "directly compete with and cannibalize sales from YRN apparel". (Cher aff at ¶ 5, Dkt No. 34). As noted above, neither *Y.R.N.* nor *Yung Rich Nation* was sufficiently popular to get onto the Billboard charts. Further, by the time the Bravado transaction was signed, over 200 weeks after "*Yung Rich Nation*" was released, the album (and "*Y.R.N.*") would have been stale and the window of opportunity to exploit the popularity of the song and album would have closed. There simply was no market left to "cannibalize". "Explosion" of the popularity of the group, Migos, offered scant opportunity to revive the stale "YRN" mark. The market for apparel bearing the name of a faded Migos song or album was gone and the restrictive covenants in § 11.2 no longer made commercial sense.[6]

As plaintiff argues, "the existence of an ambiguity will not preclude summary judgment unless resolution of that ambiguity depends upon [admissible] extrinsic evidence" (*Hudson-Port Ewen v Kuo*, 165 AD 2d 301, 305 (sic) [3d Dept 1991]) (Reply at 19, Dkt. No. 97). The cited case also counsels that "if there is ambiguity in the terminology used . . . *and* determination of the intent of the parties depends on the credibility of extrinsic evidence or on a choice among reasonable

[6] Plaintiff's assertion that the "intent" of the Agreement is to preclude defendants from licensing apparel "bearing" the name "Migos" in competition with the two limited trademarks it acquired (*id.*) and its disputing as "palpably incorrect" that it has no right to participate in the exploitation of trademarks that were never transferred to it, (*see* Br. at 11 disputing that the Agreement covers only the "YRN" and "Yung Rich Nation: marks; *see also* Cher aff, ¶ 25) are unavailing. There simply is no evidence of plaintiff ever acquiring an interest in the Migos name.

inferences to be drawn from extrinsic evidence, then such determination is to be made by the jury .... On the other hand, if the equivocality must be resolved wholly without reference to extrinsic evidence the issue is to be determined as a question of law for the court" (*Hudson-Port Ewen*, 165 AD 2d at 303 [emphasis supplied], citing *Hartford v Wesolowski*, 33 NY 2d 169, 171-172 [1973]).

Here, the court's conclusion that § 2.11 (c) is an unreasonably restrictive covenant is based on the inherently short lived nature of the two Marks, the incontrovertible fact that plaintiff never had any right to or interest in the "Migos" name, and the fact that by the time of the Bravado transaction, the stated need for the restriction had dissipated. Any ambiguity that may exist as to the interpretation to be given § 11.2(c) has no bearing on these facts. Because the breach of contract claim may be resolved without reference to extrinsic evidence, the motion for summary judgment as to the first cause of action must be denied and summary judgment shall be granted to defendants (*see* CPLR 3212 ["If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion"]).

Even if the court had not concluded that the restrictive covenant is unreasonable, the motion would be denied for a number of reasons. First, none of the individual defendants are parties to the operative YRN LLC Agreement (*see* NYSCEF Doc. No. 35, p. 1, stating that "Migos LLC has acquired the membership interest *previously held* by [individual defendants]" [emphasis added]). To the extent plaintiff claims the individual defendants are bound as evidenced by their signatures on the Agreement (Dkt. No. 33 p.7), the page containing their signatures was inserted into the Agreement which plaintiff presented to the court and appears to be fraudulent (*see* Agreement at page "12", Dkt. No. 35).

Second, Migos LLC, the only defendant that is a party to the Agreement, has no right, title, or interest in the "Migos" name, or mark. Its sole asset is the 25% interest in YRN LLC the individual defendants assigned to it (*see* Dkt. No. 102, § 11 [b]). As the Migos LLC Operating Agreement recites, the purpose of the company was merely "producing and managing a clothing line in accordance with a business plan *to be developed*" (emphasis added) (*id.*, Migos LLC Agreement § 3). Plaintiff had actual knowledge of these facts (*see* email exchanges re: Migos LLC, Dkt. No. 102).

Third, assuming that, by virtue of the signatures affixed to the last page of the Agreement below the words "Agreed for purposes of Sections 9.1 and 11.2", § 11.2 of the YRN LLC

Agreement is read as a binding commitment to limit the freedom of the individual defendants to license interests in the "Migos" mark to third parties, that limitation cannot be extended to Cephus and Nance as neither signed it (*see* Agreement, Dkt. No. 35, p. 13). And there is no merit to plaintiff's assertion that Cephas and Nance are bound by virtue of their membership in Migos, LLC, a clothing company.

Fourth, § 11.2(c) of the Agreement is ambiguous and it is inconsistent with § 3.5. Section 11.2(c) states:

> [e]ach of Migos LLC, each Migos Performer and each of Jerel Nance and Pierre Thomas agrees not to, directly or indirectly produce or license (or cause to be produced or licensed) under the "Migos" name any item of the kind produced by the Company under, the Trademark.

However, § 3.5 authorizes the Managers to engage in competing businesses. It states:

> [n]othing herein shall . . . impose any restriction on the ability or right of the managers or Members and their affiliates . . . to render services, including the same or similar services contemplated hereby, or engage in any business venture or activity of any nature or description. . ., except as expressly provided in Section 3.1(b) above.

*(id.)*. This provision directly conflicts with § 11.2 [c].

Section 11.2(c) is also ambiguous, as plaintiffs' counsel reluctantly acknowledged at oral argument. The provision prohibits the parties named in that section from producing or licensing "under the 'Migos' name any item of the kind produced by the Company under the Trademark [YRN]." Read literally, the provision does not limit the production or licensing of apparel *bearing* the "Migos" name. The word "under" is not synonymous with the word "bearing" (*see* the over twenty usages of "under" in the American Heritage Dictionary of the English Language [4th ed.]). Accordingly, plaintiff's assertion that that the two words have the same meaning is rejected. The claim that the parties *intended* "under" to mean "bearing" is likewise rejected as it is undisputed that § 11.2 "was not negotiated or even discussed between the parties" (Cher aff. ¶ 19) (*see* n. 4 *supra*). In § 11.2(a) the intention to have the Migos Performers wear garments "*bearing* the Trademark" is plainly stated (*see* Agreement ¶ 11[a], Dkt. No. 35). (emphasis supplied). Plaintiff asks the court to construe the word "under" in § 2.11(c) to mean "bearing" (Br. at 14-15, Dkt. No. 33). The court declines.[7] This does not render the section "entirely superfluous" (Br. at 15)

[7] Were the court re-write the section in the way requested so as to replace "under" in the two places where it appears, the provision may be interpreted to prohibit Migos LLC from selling apparel bearing both the "Migos" and "YRN" or "Yung Rich Nation" names (*see* Opp. at n. 8).

because, as defendants observe, defendants actually retained trademark ownership rights in the YRN marks other than those assigned (Opp. at 13-14).

**B. Declaratory Judgment**

"The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed" (Civil Practice Law and Rules 3001). This court may decline to hear the matter if there are other adequate remedies available (*Morgenthau v Erlbaum*, 59 NY2d 143, 148 [1983]).

Having determined that the first cause of action shall be dismissed, the court declines to exercise its discretion to consider that branch of the motion for partial summary judgment seeking a declaration "that Defendants have a contractual obligation not to license and cause to be produced and sold certain merchandise bearing the "Migos" name in contravention of § 11.2(c) of the Operating Agreement" (Br. at 25, Dkt. No. 33). That cause of action is "unnecessary and inappropriate when the plaintiff has an adequate alternative remedy in another form of action, such as breach of contract" (*Apple Records, Inc. v Capital Records, Inc.*, 137 AD 2d 50, 54 (1st Dept 1988). Such is the case here, as plaintiff concedes (*see* Reply at 11). Moreover, if the court were to allow the declaratory judgment cause of action to stand, it would permit plaintiff to circumvent the individual defendants' rights to a jury trial, a result the court will not countenance.[8]

**C. Sanctions**

The Administrative Rules of the Unified Court System provide that "[t]he court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part" (22 N. Y.C.R.R. 130-1.1(a)). Frivolous conduct is defined as follows: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false." (*Id.* at 130-1.1[c]).

[8] The individual defendants are not bound by the jury waiver clause in the Agreement (NYSCEF Doc. No. 35, § 13.8).

Here, plaintiff seeks reimbursement for the costs of "addressing, and remedying, Defendants'... blanket objections" (mem at 25). While defendants did make blanket objections to a number of discovery requests, plaintiff repeatedly refused to meet and confer with defendants regarding those objections. Plaintiff also made a number of inappropriate and irrelevant requests, including requests for information concerning defendants' criminal records. In any event, following the most recent conference with the court, defendants supplemented their responses to interrogatories and agreed to produce outstanding documents. While defendants' counsel is not without fault, their discovery conduct did not rise to the level of being sanctionable.

Accordingly, it is hereby

**ORDERED** that plaintiff's motion for partial summary judgment is DENIED in all respects; and it is further

**ORDERED** that the first and third causes of action, for breach of contract and declaratory judgment, respectively, are hereby DISMISSED; and it is further

**ORDERED** that counsel for the parties shall appear at a status conference on Tuesday, October 15, 2019, at 10:30 AM at Part 49, Room 252, 60 Centre Street, New York, New York.

This constitutes the decision and order of the court.

**DATED: September 12, 2019**

**ENTER,**

**O. PETER SHERWOOD J.S.C.**