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October 10, 2017

VIA ECF

Honorable P. Kevin Castel, U.S.D.J.
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 24B
New York, NY 10007

Re: ***Herlihy, et al. v. Fyre Media, Inc., et al., No. 17-cv-3296-PKC***
Daly, et al. v. McFarland, et al., No. 17-cv-3461-PKC

Dear Judge Castel:

Pursuant to this Court's Orders re Initial Pretrial Conference (Dkt. No. 5 in the Herlihy Action as amended on August 30, 2017 and Dkt. No. 19 in the *Daly* Action), Plaintiffs Matthew Herlihy and Anthony Lauriello in the *Herlihy* Action and Plaintiffs Sean Daly and Edward Ivey in the *Daly* Action ("Plaintiffs"), along with Defendant Jeffrey Atkins ("Atkins"),¹ respectfully jointly submit this letter providing: (a) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s); (b) any contemplated motions; and (c) the prospect for settlement. The Pretrial Conference in both actions is currently scheduled for October 17, 2017, at 10:45 a.m.

A. Case Description

Plaintiffs commence this proposed class action for alleged damages relating to Defendants' alleged false representations, material omissions, and negligence with regards to the "Fyre Festival" they promoted. Plaintiffs allege that Defendants failed to organize, prepare, and provide attendees with the experience that the Defendants marketed as being a luxurious music festival on a private-island getaway.

¹ As of this filing, two defendants, Fyre Media, Inc. and William McFarland, have failed to respond to Plaintiffs' complaint within the time permitted by the federal rules and Plaintiffs have requested entry of default as to those defendants. *See* Dkt. No. 16. Defendant Grant Margolin has not yet been served with the complaint despite Plaintiffs' repeated attempts. Plaintiffs Herlihy and Lauriello filed a request for default against Fyre Media, Inc. and William McFarland on August 14, 2017 (Dkt. No. 16). The Court has not ruled on the request.

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Atkins denies all substantive allegations alleged in the Complaint and further states that the Plaintiffs and the purported class failed to demonstrate that defendant, Atkins, committed fraud, made any misrepresentations, attempted to deceive them, and/or is otherwise liable under a legal theory of common law or statutory fraud, misrepresentation, or conspiracy to do the same. Defendant, Atkins, further contends that the Complaints should be dismissed because Plaintiffs and the purported class failed to plead allegations to pierce the corporate veil and/or otherwise provide any basis for liability against Atkins. Alternatively, if allegations to pierce the corporate veil were alleged, Plaintiffs and the purported class did so broadly and failed to provide a factual basis for personal liability against Atkins. Atkins also contends that the Plaintiffs failed to demonstrate a *prima facie* case for class certification under Rule 23.

Plaintiffs seek redress on a class-wide basis for Defendants' alleged deceptive business practices and negligence in selling tickets to "Fyre Festival" which was on an island that had no adequate infrastructure, including basic necessities and security, much less the musical acts and other activities that were promised. Atkins, on the other hand, denies that he is liable to the Plaintiffs and further states that allegations against him are all lumped together and fail to meet the requisite under Rule 9. Plaintiffs bring claims individually and on behalf of all others similarly situated against Defendants for negligence, fraud, and for violations of consumer protection statutes.

B. Contemplated Motions

Currently, there are four other proposed class actions against Defendants in addition to the *Herlihy* and *Daly* Actions. The other four actions are as follows:

1. *Jung v. McFarland, et al.*, Case No. 2:17-cv-3245 (pending in C.D. Cal.)
2. *Reel v. Atkins, et al.*, Case No. 1:17-cv-21683 (pending in S.D. Fla.)
3. *Petrozziello, v. Fyre Media, Inc., et al.*, Case No. 2:17-cv-3018 (pending in D. NJ)
4. *Jutla v. Fyre Media, Inc.*, Case No. 1:17-cv-3541 (pending in S.D. N.Y. before Hon. Edgardo Ramos)

Plaintiffs Herlihy and Laurielo filed a motion before the Judicial Panel on Multidistrict Litigation ("Panel") to have all six actions consolidated and transferred to the Southern District of New York pursuant to 28 U.S.C. § 1407. While the Panel stated that the actions should be litigated in New York, it denied the motion.

Plaintiffs anticipate filing a motion for consolidation of the actions pending in the Southern District of New York and for the appointment of Interim Counsel pursuant to Fed. R. Civ. Proc. 23(g). It is Plaintiffs' understanding that the parties in the *Petrozziello* action are stipulating to transfer that action to this Court.

Plaintiffs also anticipate filing a motion for class certification after discovery is taken. Discovery in this action may be delayed given that two defendants have not yet appeared and

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there are criminal proceedings ongoing against Mr. McFarland. Plaintiffs will also seek third-party discovery of investors and/or any potential insurance companies. Finally, Plaintiffs may seek default judgments against Plaintiffs McFarland and Fyre Media, Inc.

C. Prospect for Settlement

Currently, there are no prospects for settlement.

Very truly yours,

/s/ Rosemary M. Rivas

Rosemary M. Rivas

Counsel for Plaintiffs
Matthew Herlihy and Anthony Lauriello

/s/ Marc L. Godino

Marc L. Godino

Counsel for Plaintiffs
Sean Daly and Edward Ivey

/s/ Thomas H. Herndon, Jr.

Thomas H. Herndon, Jr.

Counsel for Defendant
Jeffrey Atkins

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW HERLIHY and ANTHONY
LAURIELLO, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WILLIAM MCFARLAND, an individual;
JEFFREY ATKINS p/k/a JA RULE, an
individual; GRANT MARGOLIN, an
individual; FYRE MEDIA, INC., a Delaware
Corporation; and DOES 1 through 50,
inclusive;

Defendants.

Civil Action No. 1:17-cv-03296 (PKC)

**CIVIL CASE MANAGEMENT PLAN
AND SCHEDULING ORDER**

SEAN DALY, EDWARD IVEY, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

BILLY MCFARLAND, an individual;
JEFFREY ATKINS p/k/a JA RULE, an
individual; FYRE MEDIA, INC., a Delaware
Corporation; and DOES 1 through 50,
inclusive;

Defendants.

Civil Action No. 1:17-cv-03461 (PKC)

**CIVIL CASE MANAGEMENT PLAN
AND SCHEDULING ORDER**

This Civil Case Management Plan (the “Plan”) is submitted by the parties in the above-captioned cases in accordance with Rule 26(f)(3), Fed. R. Civ. P.

1. All parties **do not consent** to conducting all further proceedings before a Magistrate Judge, including motions and trial. 28 U.S.C. 5 636(c). The parties are free to withhold consent without adverse substantive consequences.
2. This case **is** to be tried to a jury.
3. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed within ___ days from the date of this Order. [Absent exceptional circumstances, thirty (30) days.]
4. Initial disclosures, pursuant to Rule 26(a)(1), Fed. R. Civ. P., shall be completed not later than **14 days** from the date of this Order. [Absent exceptional circumstances, fourteen (14) days.]
5. All fact discovery shall be completed no later than **October 1, 2018**. [A period not to exceed 120 days, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 5 above:
 - a. First Set of Initial requests for production of documents to be served by **10/31/17**.
 - b. First Set of Interrogatories to be served by **1/15/18**.
 - c. Depositions to be completed by **10/1/18**.
 - d. First Set of Requests to Admit to be served no later than **1/15/18**.
7.
 - a. All expert discovery shall be completed no later than **60 days after the close of fact discovery**.
 - b. No later than thirty (30) days prior to the date in paragraph 5, i.e., the completion of all fact discovery, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party’s expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 7(a).
8. All motions and applications shall be governed by the Court’s Individual Practices, including pre-motion conference requirements, except that motions in limine may be made without a pre-motion conference on the schedule set forth in paragraph 11. Pursuant to the authority of Rule 16(c)(2), Fed. R. Civ. P., any motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto is made in

writing within fourteen (14) days of the date in paragraph 5, i.e., the close of fact discovery.

9. All counsel must meet face-to-face for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.
10. a. Counsel for the parties have discussed an informal exchange of information in aid of an early settlement of this case and have agreed upon the following:
N/A
- b. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and/or (iii) retention of a privately retained mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case: N/A
- c. Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph b, be employed at the following point in the case (e.g., with in the next sixty days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery).
N/A
- d. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.
11. The Final Pretrial Submission Date is thirty (30) days following the close of fact and expert discovery (whichever is later). By the Final Pretrial Submission Date, the parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Practices and Rule 26(a)(3), Fed. R. Civ. P. Any motions in limine shall be filed after the close of discovery and before the Final Pretrial Submission Date and the pre-motion conference requirement is waived for any such motion. If this action is to be tried before a jury, proposed voir dire, jury instructions and verdict form shall also be filed by the Final Pretrial Submission Date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the joint submission. Jury instructions may not be submitted after the Final Pretrial Submission Date, unless they meet the standard of Rule 51(a)(2)(A), Fed. R. Civ. P. If this action is to be tried to the Court, proposed findings of fact and conclusions of law should be submitted by the Final Pretrial Submission Date.
12. Counsel for the parties have conferred and their present best estimate of the length of trial is: **10 days.**

13. Plaintiffs anticipate moving forward with default proceedings against those Defendants who have been served in this case, but have not appeared. Plaintiffs will also be filing a class certification motion after sufficient discovery has been conducted. Finally, the parties anticipate that additional related cases, including cases outside this District, will be transferred to this Court and ultimately consolidated with the low-numbered *Herlihy* action.

TO BE COMPLETED BY THE COURT:

The Plan has been reviewed by the Court and, except as modified, is adopted as the Scheduling Order of this Court in accordance with Rule 16(b), Fed. R. Civ. P.

14. [Other]

15. The next Case Management Conference is scheduled for _____ at _____.

This ORDER may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as noted in paragraph 6) shall be made in a written application in accordance with paragraph 1(C) of the Court’s Individual Practices and shall be made no less than five (5) days prior to the expiration of the date sought to be extended.

P. Kevin Castel
United States District Judge

Dated: New York, New York
