

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:21-CV-251-BO

BERINGER COMMERCE, INC. d/b/a
BLUE ACORN iCi,

Plaintiff,

v.

FIN CAP, INC. d/b/a "BLUEACORN.CO,"
BLUE ACORN PPP, LLC, and BLUE OAK
FOREST, LLC,

Defendants.

**REPORT OF THE PARTIES' FED. R.
CIV. P. 26(f) MEETING**

NOW COMES Plaintiff BERINGER COMMERCE, INC. d/b/a BLUE ACORN iCi and Defendants FIN CAP, INC. d/b/a BLUE ACORN.CO, BLUE ACORN PPP, LLC, and BLUE OAK FOREST, LLC and hereby file their Rule 26(f) of the Federal Rules of Civil Procedure Report.

1. Participants: On August 18, 2021, the following persons participated in a Rule 26(f) conference:

- a. Thomas Babel, representing Plaintiff
- b. Christopher Blake, Martin Warf and& John McElwaine, representing Defendants.

2. Initial Disclosures: The parties will complete by **September 13, 2021** the initial disclosures as required by Rule 26(a)(1).

3. Discovery Plan: The parties propose the following discovery plan:

- a. Discovery will be needed on all matters raised by the pleadings, as well as the identity and liability of potential additional parties.
- b. The date for completion of fact discovery is **February 18, 2022**.
- c. Each party may serve a maximum of 30 interrogatories on each opposing party and the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. For the purposes of the limitations set forth herein, Plaintiff will be deemed to be one party and Defendants, jointly, will be deemed to be the other party.
- d. Each party may serve a maximum of 30 requests for admission on each opposing party. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed served on the requesting party a written answer or objections addressed to the matter and signed by the party or its attorney.
- e. The parties agree to a maximum of 25 fact depositions. The parties seek this number of fact depositions because of the number of customer complaints in question in this matter and believe that the duration of many of these depositions will be brief. Because some depositions may be conducted remotely, the parties ask the Court, pursuant to Rules 28, 29 and 30 of the Federal Rules of Civil Procedure, to appoint any person regularly engaged in stenographic court reporting and selected by a party noticing a deposition in this matter to administer oaths remotely and to take testimony remotely for any deposition taken in this matter.

- f. The parties agree to a 7-hour maximum for depositions unless the parties agree to a longer period of time.
- g. Reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) shall be served by the Plaintiff no later than **March 10, 2022**, and by Defendants no later than **March 30, 2022**. The parties agree to each bear their own costs and expenses in connection with experts identified under either subsection of Rule 26, including those costs and expenses associated with making the witnesses available for deposition. The parties further agree that each party's experts may be made available for deposition in the jurisdiction in which they reside.
- h. The parties agree that expert depositions must be completed by **April 29, 2022**.
- i. Supplementation of discovery will be as provided in Rule 26(e) or as otherwise ordered by the court.
- j. The parties do not anticipate any issues with the preservation or discovery of ESI at this time.
- k. The parties do not anticipate any issues concerning privilege matters.

4. Other Items:

- a. The Parties do not require a meeting with the Court before a scheduling order is entered.
- b. The deadline for all parties to amend the pleadings or join parties is **October 13, 2021**.
- c. Dispositive motions deadline is **May 30, 2022**.

- d. The parties request a trial date no sooner than 30 days following a ruling on any dispositive motions and request a pre-trial conference with the Court fourteen days before the trial date.
- e. The parties anticipate that the trial of this matter will take between 3-5 days.
- f. The parties agree to electronic service of all documents that are not required to be filed on CM/ECF in this action.
- g. The parties have discussed settlement with their clients and have exchanged settlement proposals. To date, the parties have been unable to amicably resolve this matter and are open to further discussion as this matter proceeds.
- h. Pursuant to the Court's August 2, 2021 Order, the parties discussed conducting a mediation in this matter and believe a mediation would be most beneficial if conducted either after the close of fact discovery or after some significant fact discovery has been completed. The parties have agreed to appoint Judge James Gale as the mediator for this matter.

(Signatures on following page)

RESPECTFULLY SUBMITTED this the 23rd day of August, 2021

/s/ Thomas Babel

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