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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11
12 BRAND SENSE PARTNERS, LLC, a California
limited liability company,

13 Plaintiff,

14 v.

15 BRITNEY SPEARS, an individual; BRITNEY
16 BRANDS, INC., a Louisiana corporation;
17 JAMIE SPEARS, an individual; and DOES 1
through 50,

18 Defendants.
19

CASE NO. BC458461

[Assigned to the Honorable Teresa Sanchez-Gordon, Department 74]

**NOTICE OF MOTION AND MOTION TO
COMPEL DEPOSITION OF DEFENDANT
BRITNEY SPEARS**

Date: July 11, 2011
Time: 8:30 a.m.
Location: Dept. 74

Action Filed: March 30, 2011
Trial Date: None Set

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 01 2011

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy
Mary Flores

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06/02/11

THIS IS A REPRINT OF THE ORIGINAL
CIT/CASE: BC458461 LEA/DEF#: 210
RECEIPT #: CCH478857105
DATE PAID: 06/01/11 04:27:20 PM
PAYMENT: \$40.00
RECEIVED:
CHECK: 40.00
CASH:
CHANGE:
CARD:

ORIGINAL

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 11th at 8:30 a.m., or soon thereafter as counsel may
3 be heard, in Department 74 of the above-captioned court, located at 111 North Hill Street, Los
4 Angeles, California, Plaintiff Brand Sense Partners, LLC will and hereby does respectfully move the
5 Court for an order compelling Defendant Britney Spears to appear for her deposition pursuant to
6 Code of Civil Procedure section 2025.450 and to provide truthful and accurate responses to the
7 questions posed at deposition pursuant to Code of Civil Procedure section 2025.480(a).

8 **PLEASE TAKE FURTHER NOTICE** that Plaintiff will and hereby does move for
9 sanctions against defendant Britney Spears in the amount of \$4,500 which represents reasonable
10 attorney's fees and costs pursuant to Civil Procedure Code sections 2025.450(c)(1), (d), and
11 2025.480(f). This amount includes attorney' fees and costs associated with drafting and filing this
12 motion to compel, the reply brief, and attending the hearing on this motion. This Motion is based on
13 this Notice, the accompanying Memorandum of Points and Authorities, the Declaration of Geoffrey
14 A. Neri filed concurrently herewith, the records on file in this action, and any oral argument that may
15 be had at the hearing on this Motion.

16
17 DATED: June 01, 2011

MILLER BARONDESS, LLP

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19 By: Geoffrey A. Neri
20 Geoffrey A. Neri
21 Attorneys for Plaintiff
22 Brand Sense Partners, LLC
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Brand Sense Partners, LLC (“Brand Sense”) tried to avoid this motion but
4 unfortunately has been unable to do so. Brand Sense will lose almost a million dollars in revenue
5 this year (and potentially even greater sums every year thereafter in perpetuity) if its lawsuit against
6 Defendant Britney Spears is not quickly resolved. To that end, Brand Sense needs to take the
7 deposition of Ms. Spears without delay. Time is of the essence – Ms. Spears will soon be leaving on
8 an extended international concert tour lasting until the end of the year, and the tour will likely be
9 used as an excuse to further delay the deposition. Brand Sense cannot and should not have to wait
10 several more months to take Ms. Spears’ deposition.

11 Ms. Spears was given notice to appear for a deposition on April 29, 2011. Her counsel told
12 Brand Sense’s counsel she would not appear on that date but that they would arrange another date.
13 Over the course of the next month, Brand Sense’s counsel exchanged over a dozen emails and phone
14 calls with Ms. Spears’ counsel in an attempt to cooperate and find a mutually agreeable date for the
15 deposition. Ms. Spears’ counsel told Brand Sense’s counsel repeatedly that they would confer with
16 their client and her other attorneys to resolve the matter. Ms. Spears’ counsel eventually told Brand
17 Sense’s counsel that because of the conservatorship in place over Ms. Spears’ financial affairs –
18 approval would be needed by the conservatorship attorney – and as such, it was out of his hands.

19 Ms. Spears is competent to testify, and she is the key witness in this case. She has direct
20 knowledge of the operative agreements at the heart of this dispute and has signed each of them.
21 These agreements all provide an enormous personal benefit to her. Brand Sense identified and
22 negotiated for Ms. Spears one of the most profitable deals in the brand licensing industry and
23 deserves to hear from her why she feels that she has no obligation to pay them for doing so, despite
24 her having signed three contracts requiring payment. This case is the epitome of the old adage “no
25 good deed goes unpunished.”

26 Ms. Spears has knowledge of all of the facts forming the basis of Brand Sense’s claims.
27 Brand Sense has waited more than a reasonable amount of time for Ms. Spears’ deposition and
28 cannot wait any longer. Ms. Spears and her counsel will not provide a date or even a range of dates

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1 for the deposition. An order compelling her deposition is therefore required.

2 **II. BACKGROUND**

3 Plaintiff Brand Sense Partners, LLC (“Brand Sense”) filed its Complaint on March 30, 2011.
4 The Complaint names Britney Spears and her father Jamie Spears, individually, and Ms. Spears’
5 company Britney Brands, Inc., as defendants.

6 Brand Sense is a brand management and business development firm. Its claims against Ms.
7 Spears are based on brand licensing contracts it had with Ms. Spears and her company Britney
8 Brands, Inc. (“Britney Brands”). In a September 19, 2003 agreement, Brand Sense agreed to
9 identify and develop licensing opportunities for the Britney brand. (Cmpl. ¶ 32 & Ex. “A”.) In
10 exchange, Ms. Spears and Britney Brands agreed to provide as commission 35% of total royalty
11 revenue on the categories of products licensed under the agreement. (*Id.* ¶ 33 & Ex. “A” at 1.)
12 These categories include: “Accessories, Apparel, Collectibles, Consumer Electronics,
13 Gifts/Novelties, Headwear, Health/Beauty, Housewares, Publishing, Stationery/Gifts, Toys/Games .
14 . . .” (*Id.* & Ex. “A” at 3.)

15 Brand Sense performed diligently for Ms. Spears, initially focusing its efforts on finding
16 fragrance licensing opportunities. Through significant legwork, Brand Sense identified a number of
17 potential opportunities and pitched the idea of Britney-branded products to a number of companies,
18 such as Elizabeth Arden and Unilever and others. Many of these potential licensees were
19 apprehensive or simply not interested as, at the time, Ms. Spears was in a period of personal and
20 professional upheaval and considered too volatile and risky an investment. Eventually, Brand Sense
21 obtained a meeting with the president of the cosmetics company Elizabeth Arden, Inc. (“Elizabeth
22 Arden”) and persuaded him to enter into a licensing agreement utilizing the Britney Spears brand. It
23 took significant effort on the part of Brand Sense to negotiate the terms to the deal. Finally, in
24 February 3, 2004, Elizabeth Arden signed a contract to manufacture and sell fragrances under the
25 Britney Spears brand. (Cmpl. ¶ 37 & Ex. “B”.) Pursuant to that agreement, Brand Sense was and is
26 entitled to receive a 35% commission on total royalty revenue associated with the wholesale sales of
27 those fragrances. (Cmpl. ¶ 38 & Ex. “B”.)

28 The licensing deal Brand Sense established with Elizabeth Arden for Ms. Spears was an

1 industry “game changer.” It is one of the most profitable fragrance deals in the history of brand-
2 licensing. Under the terms of the Elizabeth Arden agreement, Brand Sense secured guaranteed
3 minimum royalties totaling \$27 million over 10 years. (Cmpl. ¶ 40 & Ex. “B” at 4.) Ms. Spears
4 never had a brand-licensing deal as profitable as the Elizabeth Arden deal before or since. More
5 importantly, the deal would never have been made or sustained without Brand Sense. Ms. Spears’
6 unpredictable behavior and failure to keep commitments to assist in the marketing of products under
7 the Elizabeth Arden agreement became a cause of concern for Elizabeth Arden. Brand Sense kept
8 the deal alive by managing the relationship with Elizabeth Arden through periods when Ms. Spears
9 was unavailable or dysfunctional as a result of her widely publicized personal crises, culminating in
10 the imposition of a conservatorship over her financial affairs.

11 Ms. Spears’ managers became unhappy with the scope of Ms. Spears initial agreement with
12 Brand Sense, which covered a broad range of products. (e.g. accessories, apparel, collectibles,
13 consumer electronics, gifts/novelties, headwear, health/beauty, housewares, publishing,
14 stationary/gifts, toys/games.) Brand Sense had no obligation to amend its original agreement with
15 Ms. Spears. However, in the interest of keeping Ms. Spears happy and further promoting an
16 important client relationship, Brand Sense agreed to execute an addendum to the original agreement
17 in May 2005. (*Id.* ¶ 42 & Ex. “C”.) In that addendum, Brand Sense made a substantial concession,
18 giving up the right to receive royalties on all but one product category: fragrance.

19 The central purpose of the addendum was to make certain that the parties understood and
20 agreed that fragrances under the Elizabeth Arden agreement would be locked down as a remaining
21 source of royalties for Brand Sense. The addendum expressly refers to and acknowledges the
22 Elizabeth Arden agreement and Brand Sense’s right to receive commissions on “any and all products
23 produced under the Elizabeth Arden agreement including, without limitation, fragrance” (*Id.* &
24 Ex. “C” at 1.) For added clarity, the addendum includes a survival clause that states: “For avoidance
25 of doubt, BSP’s management, invoicing, collection and reporting of third party proceeds from the
26 Elizabeth Arden, Inc. agreement shall survive expiration or termination of the Term Sheet and shall
27 continue for the duration of that license agreement, *including renewed extensions, additions or*
28 *modifications.*” (*Id.*) (italics added).

1 Ms. Spears earned (and continues to earn) millions of dollars under the Elizabeth Arden
2 agreement and for a number of years Brand Sense received the commissions to which it was entitled.
3 However, Ms. Spears and Britney Brands apparently unilaterally decided that Brand Sense had been
4 paid enough and began to plan to cut Brand Sense out of its commissions. (Cmpl. ¶¶ 47-56.) In late
5 2009, or early 2010, Britney Brands surreptitiously negotiated and entered into a separate “new”
6 fragrance-licensing agreement with Elizabeth Arden that covered the exact same terms of the
7 original Elizabeth Arden agreements. (*Id.* ¶¶ 56-57.) The only difference was it excluded Brand
8 Sense from its royalties. The “new” license agreement is a circumvention and violation of the
9 agreements between Brand Sense and Ms. Spears. (*Id.* ¶ 58.) Ms. Spears and Britney Brands
10 entered into the “new” agreement in the dark, concealing it from Brand Sense, and Brand Sense only
11 found out about it from Elizabeth Arden more than a year later, in 2011. (*Id.* ¶ 54.)

12 Brand Sense’s claims all revolve around Ms. Spears. She negotiated and executed the
13 operative agreements, the agreements were entered into solely to benefit her and her company
14 Britney Brands, and she has personal knowledge of all of the facts alleged in the pleadings.
15 Therefore Brand Sense noticed Ms. Spears’ deposition. (Declaration of Geoffrey A. Neri (“Neri
16 Decl.”) ¶ 2.) Ms. Spear’s counsel stated that Ms. Spears would not be appearing for deposition but
17 requested a continuance until the parties could arrange to meet and confer regarding a deposition
18 schedule. (Neri Decl. ¶ 3.)

19 Ms. Spears’ counsel did not respond with a date, and so Brand Sense’s counsel sent an email
20 again requesting a date. (*Id.* ¶ 4.) In that email, Brand Sense’s counsel stated that it hoped to avoid
21 disrupting Ms. Spears’ concert tour schedule, but that taking her deposition was a priority. (*Id.*) Ms.
22 Spears’ counsel promised to “get back to you” early the next week. (*Id.* ¶ 5.) He did not and
23 approximately one week later on May 12, 2011 Brand Sense’s counsel sent Ms. Spears’ counsel
24 correspondence again asking for a deposition date and stating that it would have no alternative but to
25 move for an order compelling the deposition if Ms. Spears did not comply. (*Id.* ¶ 6.) Ms. Spears’
26 counsel responded, stating that the delay was due to his need to coordinate with Ms. Spears court-
27 appointed conservatorship and stated he would “be back to you on this.” (*Id.* ¶ 7.)

28 One week later, on May 19, 2011. Ms. Spears’ counsel had still not responded so Brand

1 Sense's counsel sent him an email asking once again for a deposition date. (Neri Decl. ¶ 8.) He
2 explained that Brand Sense was entitled to her deposition. (*Id.*) Ms. Spears' counsel again stated
3 that he needed to talk to Ms. Spears' court-appointed attorneys and that he would have a response by
4 the next week. (*Id.* ¶ 9.) Brand Sense's counsel explained he would be filing this motion to compel
5 if a date was not forthcoming. (*Id.* ¶ 10.) In one last attempt to prevent the necessity for this motion,
6 Brand Sense's counsel sent an email again asking Ms. Spears' counsel to provide a date, stating that
7 Brand Sense was trying to avoid the burden of a motion to compel. (*Id.* ¶ 11.) Ms. Spears' counsel
8 responded that they needed to get approval from court-appointed counsel and could not provide a
9 date for the deposition. (*Id.* ¶ 12.)

10 **III. ARGUMENT**

11 **A. Brand Sense Has a Statutory Right to Take Ms. Spears' Deposition**

12 California's discovery statutes entitle parties to broad discovery of any matter, not privileged,
13 that is relevant to the subject matter of the pending action. Code of Civil Procedure ("CCP") §
14 2017.010. A deposition of a party to the action is a proper form of discovery. CCP § 2025.010. The
15 statutory right to take depositions may not be withheld or curtailed in discretion of the court.
16 *Carnation Co. v. Superior Court*, 96 Cal.App.2d 138 (1950). The Discovery Act confers upon
17 litigants the right to take depositions without prior court order or approval and, with certain
18 exception, does not require any showing of good cause for taking of depositions. *Kramer v.*
19 *Superior Court*, 47 Cal.Rptr. 317 (1965). A party is entitled to take the testimony of his opponent
20 before trial for the purpose of discovery. *Meyer v. Cooper*, 44 Cal.Rptr. 57 (1965). A trial court has
21 a clear duty to enforce the statutory right to a deposition and compel a witness to testify. *Brown v.*
22 *Superior Court*, 34 Cal.2d. 559 (1949).

23 Ms. Spears is the principal witness to the facts giving rise to the claims in this case. The case
24 entails agreements made by her or on her behalf, negotiations conducted by her or on her behalf and
25 misrepresentations made by her or on her behalf. She has direct knowledge of all of the facts in this
26 case and must provide testimony. As set forth above, Ms. Spears was provided with a valid
27 deposition notice. She has had over a month to find time in her schedule to schedule a deposition
28 and has not done so. Ms. Spears will soon be departing on a lengthy international concert tour –

1 schedule to last until November 2011 (*See* Neri Decl., Exh. "C") – and she will likely use this tour as
2 a new excuse not to appear for her deposition. There is not a separate set of rules of civil procedure
3 for celebrities. Like any other busy professional, Ms. Spears must comply with the rules.

4 **B. Ms. Spears is Competent to Testify on Her Own Behalf**

5 As indicated above, counsel for Ms. Spears has stated that he is seeking approval and/or
6 authority from Ms. Spears' court-appointed attorney in connection with a conservatorship over her
7 financial affairs. Despite the continuing effect of the conservatorship, under which Ms. Spears is
8 deemed "incompetent" to manage her financial affairs, there is no reason to conclude Ms. Spears is
9 incompetent to testify, as set forth in the California Evidence Code.

10 Evidence Code § 700 states, in relevant part, "every person, irrespective of age, is qualified
11 to be a witness and no person is disqualified to testify to any matter." The only limited exception to
12 this general rule is provided in Evidence Code § 701(a) which provides a person is disqualified if
13 "(1) Incapable of expressing himself or herself concerning the matter so as to be understood, either
14 directly or through interpretation by one who can understand him; or (2) Incapable of understanding
15 the duty of a witness to tell the truth."

16 Under these provisions, Ms. Spears is clearly competent to testify. There can be no showing
17 that she is incapable of expressing herself or understanding her duty as a witness to tell the truth. In
18 fact, Ms. Spears has been making numerous public appearances, giving interviews, performing and
19 continuing preparations for a concert tour. There has been no indication in any of these appearances,
20 interviews and performances that Ms. Spears is incapable of expression or understanding.

21 **C. The Court Should Impose Sanctions on Ms. Spears**

22 Under Code of Civil Procedure section 2025.450, if a motion brought by the party who
23 noticed the deposition under that section is successful, a court shall award monetary sanctions in
24 favor of that moving party unless the Court finds that the party subject to sanctions acted with
25 substantial justification or circumstances exist that would make the sanction otherwise unjust. Code
26 Civ. Proc. § 2025.450(c). Likewise, under Code of Civil Procedure section 2025.480, the Court
27 shall impose monetary sanctions against a party who unsuccessfully opposes a motion to compel a
28

1 deposition absent substantial justification or circumstances that exist that would make the sanction
2 otherwise unjust. Code Civ. Proc. § 2025.480(f).

3 There is no substantial justification for Ms. Spears' failure to appear for a properly noticed
4 deposition and her refusal to even provide a date for one. Counsel for Brand Sense has cooperated
5 with opposing counsel and made every attempt to accommodate Ms. Spears. In addition, counsel for
6 Brand Sense made a good faith effort to avoid the expense and burden of this motion. Ms. Spears
7 has caused Brand Sense to incur costs and attorneys' fees in connection with drafting and filing this
8 motion to compel. Brand Sense respectfully requests sanctions in the amount of \$4,500.00 which
9 represents their reasonable attorneys' fees incurred in drafting the motion and reply brief, attending
10 the hearing, and the deposition, and costs associated with the deposition. (Neri Decl. ¶ 14.)

11 **IV. CONCLUSION**

12 For the foregoing reasons, Plaintiff Brand Sense respectfully requests that this motion be
13 granted, sanctions be imposed and that defendant Britney Spears be ordered to appear for deposition.

14
15 DATED: June 01, 2011

MILLER BARONDESS, LLP

16
17 By: 

18 Geoffrey A. Neri
19 Attorneys for Plaintiff
20 Brand Sense Partners, LLC
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11/12/2011 9:48

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA,)
3 COUNTY OF LOS ANGELES) SS.

4 I am a citizen of the United States and employed in the County of Los Angeles, State
5 of California. I am over the age of eighteen (18) years and not a party to the within action. I
6 am employed by MILLER BARONDESS, LLP and my business address is 1999 Avenue of
the Stars, Suite 1000, Los Angeles, California 90067.

7 On **June 1, 2011**, I served the original a true copy of the within document(s)
8 described as **NOTICE OF MOTION AND MOTION TO COMPEL DEPOSITION OF**
DEFENDANT BRITNEY SPEARS on all interested parties in this action:

9 **SEE ATTACHED SERVICE LIST**

10 **PERSONAL DELIVERY:** I caused such envelope to be delivered by hand to the
11 offices of the above named addressee(s).

12 **BY MAIL:** I am readily familiar with the business practice for collection and
13 processing of correspondence for mailing with the United States Postal Service. This
14 correspondence shall be deposited with the United States Postal Service this same
15 day in the ordinary course of business at our Firm's office address in Los Angeles,
California. Service made pursuant to this paragraph, upon motion of a party served,
shall be presumed invalid if the postal cancellation date of postage meter date on the
envelope is more than one day after the date of deposit for mailing contained in this
affidavit.

16 **BY OVERNIGHT DELIVERY SERVICE:** I served the foregoing document by
17 Federal Express, an express service carrier which provides overnight delivery, as
18 follows. I placed true copies of the foregoing document in sealed envelopes or
packages designated by the express service carrier, addressed to each interested party
as set forth above, with fees for overnight delivery paid or provided for.

19 **BY FACSIMILE:** I caused such envelope to be delivered via facsimile to the offices
20 of the addressee(s) at the facsimile numbers listed below. I certify that said
21 transmission was completed and that all pages were received and that a report was
generated by the facsimile machine which confirms said transmission and receipt.


22 **BY ELECTRONIC MAIL:** by transmitting via electronic mail a true copy of the
23 above listed document(s) to the email addresses set forth below on this date before
5:00 p.m.:

24 **(State)** I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

25 **(Federal)** I declare that I am employed in the office of a member of the State Bar of
this Court at whose direction the service was made.

26 Executed on **June 1, 2011**, at Los Angeles, California.

27 Adriana Preciado
28 Type or Print Name


Signature

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