



NYCLU
NEW YORK CIVIL LIBERTIES UNION

125 Broad Street, 19th Floor
New York, NY 10004
212.607.3300
212.607.3318 (fax)
www.nyclu.org

May 10, 2017

BY ECF AND FIRST CLASS MAIL

Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals
for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *Cargian v. Breitling USA, Inc.*, No. 16-3592

Dear Ms. Wolfe,

On behalf of the American Civil Liberties Union (“ACLU”) and the New York Civil Liberties Union (“NYCLU”), we write concerning the *amicus curiae* brief that we filed on consent on February 2, 2017 in support of Plaintiff-Appellant Frederick Cargian (ECF No. 58) on behalf of the ACLU, the NYCLU, and seventeen organizations that advocate for equal rights for women.¹ When we submitted the *amicus* brief, the ACLU and NYCLU were not associated with Mr. Cargian, but we have since joined the case as co-counsel and are signatories on a petition for hearing *en banc* he filed on April 19 (ECF No. 81). In light of these developments, we conferred with the organizations on whose behalf we filed the earlier *amicus* brief and have secured other counsel to represent them in any future filings in this matter. Moreover, we believe it prudent to withdraw the *amicus* brief we previously filed and therefore respectfully request to withdraw that brief.

¹This brief, which solely addresses the question of whether Title VII’s prohibition of sex discrimination includes discrimination on the basis of sexual orientation, was also filed in two other cases addressing that same issue. See Br. of *Amici Curiae* ACLU et al. in Support of Plaintiff-Appellants, *Zarda v. Altitude Express Inc.*, No. 15-3775 (2d Cir. Mar. 18, 2016), ECF No. 91; Br. of *Amici Curiae* ACLU et al. in Support of Plaintiff-Appellant, *Christiansen v. Omnicom Grp., Inc.*, No. 16-748 (2d Cir. July 5, 2016), ECF No. 67. The National Women’s Law Center, which has taken on the representation of the women’s rights *amici*, has moved for leave to file a substantially similar brief in support of the petitions for rehearing *en banc* in both *Christiansen* and *Zarda*. The ACLU and NYCLU are not *amici curiae* on those briefs.

Sincerely,



Erin Beth Harrist
Christopher Dunn
New York Civil Liberties Union

Ria Tabacco Mar
Gillian L. Thomas
Lenora M. Lapidus
James Esseks
American Civil Liberties Union
125 Broad Street
New York, N.Y. 10004
(212) 549-2500

cc (by ECF):

Janice Goodman
Law Offices of Janice Goodman
61 Jane Street
New York, NY 10014

Co-Counsel for Plaintiff-Appellant

James M. Lemonedes
Glenn Sklaire Grindlinger
Zev Singer
Fox Rothschild LLP
Suite 1500
100 Park Avenue
New York, NY 10017

Counsel for Defendant-Appellee