

16-3592

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

—◆◆◆—
FREDERICK M. CARGIAN,

Plaintiff-Appellant,

—against—

BREITLING USA, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**JOINT APPENDIX
VOLUME II OF III
(Pages A-300 to A-551)**

JAMES M. LEMONEDES
ZEV SINGER
FOX ROTHSCHILD LLP
100 Park Avenue, 15th Floor
New York, New York 10017
(212) 878-7900

Attorneys for Defendant-Appellee

JANICE GOODMAN
LAW OFFICE OF JANICE GOODMAN
61 Jane Street, Suite 11D
New York, New York 10014
(212) 869-1940

Attorneys for Plaintiff-Appellant

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FOX ROTHSCHILD LLP
Glenn S. Grindlinger, Esq.
Zev Singer, Esq.
100 Park Avenue, Suite 1500
New York, NY 10017
Tel: (212) 878-7900
Fax: (212) 692-0940

Attorneys for Breitling USA, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|---|
| FREDERICK M. CARGIAN, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- against -</p> BREITLING USA, INC., <p style="text-align: center;">Defendant.</p> |
|---|

ECF Case

No. 15-cv-01084 (GBD)

**DEFENDANT’S LOCAL
RULE 56.1 STATEMENT OF
UNDISPUTED MATERIAL
FACTS**

Pursuant to Local Rule 56.1 of the Civil Rules of this Court, Defendant Breitling USA, Inc. submits its statement of material facts as to which there is no genuine issue to be tried:

1. Plaintiff Frederick Cargian (“Plaintiff” or “Cargian”), formerly employed as a sales representative by Breitling USA, Inc. (“Defendant” or “Breitling”), brings this action pursuant to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the New York State Human Rights Law, and the New York City Human Rights Laws alleging that Breitling discriminated against him based on gender, age, and sexual orientation. *See* Complaint, filed February 17, 2015 (hereinafter, “Compl.”), annexed as Exhibit A.¹

¹ References to all exhibits are to those annexed to the Declaration of Zev Singer, dated February 29, 2016 (“Singer Decl.”), submitted herewith in support of Defendant’s Motion for Summary Judgment.

2. Plaintiff self-identifies as a gay man, and his date of birth is November 23, 1960.

Id. at ¶10.

Background:

3. Breitling is in the business of, among other things, selling and distributing “Breitling” brand watches in the USA. *See* Declaration of Thierry Prissert, dated February 29, 2016 (“Prissert Decl.”), annexed as Exhibit “B”, at ¶ 5.

4. In or about February 1990, Breitling hired Plaintiff as training manager. *See* Excerpts from Deposition Transcript of Plaintiff dated September 17, 2015 (“Plaintiff Dep.”), annexed as Exhibit “D”, at 56:4-9, 23-25.

5. In or around 1992, Plaintiff also became a sales representative at Breitling, and in approximately 1995 or 1996, Plaintiff ceased his duties as a training manager at Breitling and solely worked as a sales representative continuously until his employment with Breitling ended on December 31, 2013. *See id.* at 58:20-59:7.

6. During Plaintiff’s employment at Breitling, Breitling sales representatives’ duties included: increasing sales in his/her assigned geographic region(s); achieving their sales goals as set by Breitling at the beginning of each calendar year; selling wholesale Breitling watches to retail dealers; traveling to each account/point of sale in the geographic region and meeting with the retail agents; helping work on displays and presentation of Breitling product in retail stores; helping train retail agents on the Breitling brand, products, and history; opening new points of sale for Breitling watch sales; providing weekly activity reports to management; and ensuring each account in the geographic region(s) had the correct product and inventory. *See id.* at 65:9-67:11, *see also* Prissert Decl. at ¶ 6.

7. Each sales representative at Breitling was assigned a designated geographic territory for which he/she would be responsible for sales and performing the aforementioned duties within the designated area. *See* Prissert Decl. at ¶ 7.

8. Each such geographic territory was divided into a specific number of retail accounts, or “points of sale” or “doors.” *See id.*

9. On occasion, Breitling management would shift territory among the sales representatives or assign territory to a newly hired sales representative. *See* Declaration of Charles Anderson, dated February 29, 2016 (“Anderson Decl.”), annexed as Exhibit “C”, at ¶ 6.

10. In approximately 1999, Annie Sommer became a sales representative at Breitling and Marie Bodman, Breitling’s President at the time, decided to reassign part of Plaintiff’s previously assigned territory to Ms. Sommer. *See* Plaintiff Dep., Exhibit D, at 69:13-18.

11. In approximately 2003, when Breitling hired Chuck Anderson, Ms. Bodman reassigned some of Plaintiff’s territory to Mr. Anderson (including Delaware, Maryland, Washington DC, and Virginia territory) and assigned some of another sales representative’s sales territory to Mr. Anderson. *See id.* at 71:12-20; *see also* Anderson Decl. at ¶ 5.

12. At the beginning of 2011, when Mr. Anderson became a full-time sales manager, he gave up his sales representative duties. *See* Anderson Decl. at ¶ 7.

13. When he became a full-time sales manager, Mr. Anderson’s territory was reassigned to other sales representatives at Breitling. *See id.* at ¶ 9.

14. In 2011, territory that had been previously assigned to Mr. Anderson was reassigned to Plaintiff, including accounts in Delaware, Maryland, Washington DC, and Virginia, all of which Plaintiff had previously serviced. *See* Plaintiff’s Dep, Exhibit D, at 73:11-14, *see also* Anderson Decl. at ¶ 5, 9.

15. From approximately 1995 or 1996, when Plaintiff began solely working as a sales representative at Breitling, until December 31, 2010, his direct supervisor was Ms. Marie Bodman, who was the President of Breitling during that time period. *See* Plaintiff's Dep., Exhibit D, at 61:8-11.

16. Mr. Thierry Prissert was hired by Breitling as its new President in approximately September 2010. *See* Excerpts from Deposition Transcript of Thierry Prissert dated January 6, 2016 ("Prissert Dep."), annexed as Exhibit E, at 32:10-12, 50:17-19, *see also* Prissert Decl. at ¶ 2.

17. For approximately three to six months, Mr. Prissert had a transition period/tryout period with Breitling, during which time Marie Bodman stayed employed and shared some of the duties of President with Mr. Prissert. *See* Prissert Dep., Exhibit E, at 45:13-21, 153:12-23, *see also* Prissert Decl. at ¶ 8.

18. During this transition period, Ms. Bodman educated Mr. Prissert on various business practices at Breitling, including, among other things, the methods by which the sales representatives' goals had been previously set. *See* Prissert Dep., Exhibit E at 173:23-175:23, *see also* Prissert Decl. at ¶ 9.

19. During the transition period, Mr. Prissert sat in with Ms. Bodman at the performance reviews of the sales representatives at the beginning of 2011, at which time the sales representatives' sales goals for the year were given to them. *See* Prissert Dep., Exhibit E at 55:16-56:3, 153:24-154:12, *see also* Prissert Decl. at ¶ 21.

20. After Ms. Bodman left her employment at Breitling in 2011, Plaintiff's direct supervisors until his employment ended at Breitling were Mr. Charles Anderson, the national

sales manager for Breitling, and Thierry Prissert, the President. *See* Plaintiff's Dep., Exhibit D, at 61:23-62:14, *see also* Prissert Decl. at ¶ 10.

Salaries, Compensation, Sales Goals, and Sales for Breitling Sales Representatives:

21. Throughout the last ten years of Plaintiff's employment as a sales representative at Breitling, the sales representatives' compensation included two components: the first component was the sales representatives' base salary and the second component was the sales representatives' bonus, which was tied to achieving specified sales goals and qualitative criteria. *See* Prissert Decl. at ¶ 11.

22. Throughout Plaintiff's employment as a sales representative at Breitling, the sales representatives (including Plaintiff) and Breitling were parties to a series of one-year employment agreements, which set forth the basic terms and conditions of the sales representatives' (including Plaintiff's) employment, supplemented by the Breitling handbook. *See* Prissert Decl. at ¶ 12; *see also* Plaintiff's Dep., Exhibit D, 209:2-5.

23. These agreements contained, among other things, each sales representative's sales goals for the year, each sales representative's bonus potential for the year (and the formula by which the bonus, if any, would be calculated), and the sales representative's base annual salary. *See* 2011-2013 Cargian Employment Agreements, annexed as Exhibit "I"; *see also* Prissert Decl. at ¶ 12.

24. Sebastien Amstutz, Breitling's Vice-President since 2005, was the Breitling officer who signed off on the employment agreements for the sales representatives from 2011-2013. *See* Excerpts from Deposition Transcript of Sebastien Amstutz dated December 9, 2015 ("Amstutz Dep."), annexed as Exhibit "F", at 13:5-7, 14:22-23, 75:24-76:6.

25. While the bonus potential for the sales representatives and the formula by which it was calculated fluctuated from year to year, it was always based on, at least partially, the sales representatives' (including Plaintiff's) ability to meet the sales goals that were established for their respective territories. *See* Prissert Decl. at ¶ 13; *see also* Anderson Decl. at ¶ 14.

26. If a sales representative met or surpassed his or her sales goals, he/she would receive his/her full quantitative bonus potential; if he/she failed to meet the sales goals, he/she would receive a bonus that was less than the full potential bonus. *See* Prissert Decl. at ¶ 13; *see also* Anderson Decl. at ¶ 14.

27. In addition to the quantitative portion of the bonus, there was also a qualitative portion. *See* Amstutz Dep., Exhibit F, at 80:12-23; *see also* Prissert Decl. at ¶ 14.

28. The criteria for this qualitative portion of the bonus changed from year to year, but it generally included criteria such as how many sales visits a sales representative had made for the year, how many trainings the sales representative performed, how many of the weekly activity reports ("call reports") the sales representative sent to management. *See* Amstutz Dep., Exhibit F, 80:12-23; *see also* Prissert Decl. at ¶ 14.

29. In any given year, the formula for calculating sales representatives' bonuses was the same for each sales representative -- there were no variations among the sales representatives. *See* Amstutz Dep, Exhibit F, 77:5-20.

30. For the years 2011, 2012, and 2013, Mr. Prissert, in consultation with Mr. Anderson, was the person who made the final decision regarding what part of the qualitative bonus each sales representative would receive. *See* Amstutz Dep, Exhibit F, 82:8-20; *see also* Prissert Decl. at ¶ 15.

31. In 2012, in addition to the sales representative's bonuses, they received based upon the quantitative and qualitative formulas found in their employment agreements for that year, each sales representative received a "Special 2012 Extra Bonus." *See* Prissert Decl. at ¶ 16.

32. The Special 2012 Extra Bonus was paid to all sales representatives that year because it had been a particularly profitable year for Breitling. *See* Prissert Decl. at ¶ 16.

33. This Special 2012 Extra Bonus was paid to the sales representatives based upon their performance, with the special bonus being a percentage of each sales representative's base monthly salary, and the percentage dependent on the sales representative's overall performance (in both sales and qualitative categories). *See* Prissert Decl. at ¶ 16.

34. In addition to annual sales goals being contained in the sales representatives' annual employment contracts, the sales representatives would be presented with their annual sales goal at their yearly review meeting which usually occurred in January or February. *See* Prissert Decl. at ¶ 17.

35. Also at the yearly review meeting, the sales representatives received a performance evaluation for the prior year and their new goals for the upcoming year. *See* Prissert Decl. at ¶ 17.

36. Ms. Bodman, Mr. Prissert, Mr. Amstutz, and Mr. Anderson were present at Plaintiff's 2010 yearly sales meeting (which occurred in January or February 2011). *See* Plaintiff's Dep., Exhibit D, 219:24-220:13

37. Mr. Prissert, Mr. Amstutz, and Mr. Anderson were present at Plaintiff's 2011 and 2012 yearly sales meetings (which occurred in January or February of the following year). *See* Plaintiff's Dep., Exhibit D, 219:24-220:13.

38. As a part of the process of the sales representatives' sales goals being set and before their yearly review meeting, the sales representatives would submit their own proposed sales goals for the upcoming year. *See* Plaintiff's Dep., Exhibit D, 208:13-21, 219:6-23; *see also* Anderson Decl. at ¶ 15.

39. "Tourneau" is the name of a specific watch retailer that the Breitling sales representatives were responsible for servicing. *See* Anderson Decl. at ¶ 17.

40. Tourneau sales were sometimes counted separately from the other sales in a sales representative's territory because Tourneau was considered a "house" account, separate from the individual sales territories/regions, and the sales representatives could not control how many watches Tourneau bought from Breitling. *See* Excerpts from Deposition Transcript of Charles Anderson, dated November 24, 2015 ("Anderson Dep."), annexed as Exhibit "H", at 213:12, 246:13-17; *see also* Anderson Decl. at ¶ 17.

41. In any given year, if a sales representative's sales goals included goals for Tourneau sales, that sales representative would be given credit for Tourneau sales for that year in calculating the sales representative's sales in relation to their sales goals. *See* Anderson Dep., Exhibit H, 249:17-251:18; *see also* Anderson Decl. at ¶ 18; Prissert Dep., Exhibit E, at 102:16-103:15.

42. The sales representatives' actual sales they receive credit for (toward their annual sales goal) are tracked through Breitling computer system. *See* Anderson Decl. at ¶ 19; *see also* Prissert Dep., Exhibit E, 203:7-204:

43. For each sale that is made within a sales representative's territory, the invoice for that sale is submitted to Breitling, inputted in Breitling's computer system, and attributed to the

respective sales representative and his/her region. *See* Anderson Decl. at ¶ 19; *see also* Prissert Dep., Exhibit E, 203:7-204:9.

44. Since 2010 through the conclusion of Plaintiff's employment at Breitling, all of the sales representatives would receive monthly or semi-annual emails from Breitling management informing them of their monthly and/or year-to-date sales for their territory. *See* Prissert Dep., Exhibit E, 204:10-205:2; *see also* Anderson Decl. at ¶ 21; Excerpts from Deposition Transcript of Annie Sommer dated January 21, 2016 ("Sommer Dep."), annexed as Exhibit "G", at 68:21-69:15, Sampling of Monthly Sales Emails, annexed as Exhibit "J".

45. In addition, since at least 2003, the sales representatives at Breitling had access to the Breitling computer system that tracked the invoices and tracked their sales by territory. *See* Prissert Dep., Exhibit E, at 204:10-205:2; *see also* Anderson Decl. at ¶22; Sommer Dep., Exhibit G, at 70:16-71:8.

46. Since at least 2003, at any time, the sales representatives could log in to that computer system to check their monthly or annual sales. *See* Prissert Dep., Exhibit E, 204:10-205:2; *see also* Anderson Decl. at ¶ 22; Sommer Dep., Exhibit G, at 70:16-71:8.

47. From 2010-2013, Breitling management held annual sales meetings to, among other things, review the sales representatives' sales numbers for the year, discuss the progress of the company, the business goals of the company moving forward, and other business matters. *See* Anderson Decl. at ¶ 23.

48. From 2010-2013, all of the sales representatives were required to (and in fact did) attend these annual sales meetings. *See* Anderson Decl. at ¶ 24; *see also* Prissert Dep., Exhibit E, 262:12-22,

49. At these annual sales meetings, the sales representatives, as a group, were presented with a PowerPoint presentation that was created by Mr. Anderson. *See* Anderson Decl. at ¶ 25; *see also* Prissert Dep., Exhibit E, at 262:21-21.

50. In Mr. Anderson's PowerPoint presentations at the annual sales meeting, there were slides that showed the sales representatives' performance and sales numbers for the prior year. *See* Anderson Decl. at ¶ 25; *see also* Sampling of PowerPoint Slides, annexed as Exhibit "K".

51. Mr. Amstutz had a role in setting the base-salaries for the sales representatives. *See* Amstutz Dep, Exhibit F, at 228:8-10.

52. During his time as President of Breitling, Mr. Prissert also had the authority to set compensation for the sales representatives. *See* Prissert Decl. at ¶ 25.

53. From 2010 through December 31, 2013, Breitling added only one new sales representative, Isaac Schafrath. *See* Prissert Decl. at ¶ 39.

54. In setting the sales representatives' base salaries, things that were considered included seniority at Breitling and the salary that a sales representative was making before he/she came to work at Breitling. *See* Amstutz Dep., Exhibit F, 228:11-229:3; *see also* Anderson Dep., Exhibit H, at 281:12-283:17.

55. In 2011, Plaintiff's base salary at Breitling was \$230,000. *See* Plaintiff's 2011 Employment Contract, Exhibit I (at 0000065), *see also* Prissert Decl. at ¶ 26.

56. In 2011, Plaintiff was the highest paid sales representative at Breitling. *See* Prissert Decl. at ¶ 26.

57. In 2011, the sales representative with the next highest salary after Plaintiff was making \$210,000 in base salary. *See* Prissert Decl. at ¶ 27.

58. In 2011, the sales representative at Breitling with the lowest base salary was a heterosexual male, and he was making \$152,500 in base salary. *See* Prissert Decl. at ¶ 27.

59. In 2012, Plaintiff's base salary at Breitling was \$230,000. *See* Plaintiff's 2012 Employment Contract, Exhibit I (at BREITLING_577), *see also* Prissert Decl. at ¶ 28.

60. In 2012, Plaintiff was the highest paid sales representative at Breitling. *See* Prissert Decl. at ¶ 28.

61. In 2012, the sales representative with the next highest salary after Plaintiff was making \$215,000 in base salary. *See* Prissert Decl. at ¶ 29.

62. In 2012, the sales representative at Breitling with the lowest base salary was a heterosexual male, and he was making \$170,500 in base salary. *See* Prissert Decl. at ¶ 29.

63. In 2013, Plaintiff's base salary at Breitling was \$196,000. *See* Plaintiff's 2013 Employment Contract, Exhibit I (at BREITLING_583), *see also* Prissert Decl. at ¶ 30.

64. In 2013, Plaintiff was the third-highest paid sales representative at Breitling. *See* Prissert Decl. at ¶ 30.

65. In 2013, the sales representative at Breitling with the lowest base salary was a heterosexual male, and he was making \$85,000 in base salary. *See* Prissert Decl. at ¶ 31.

Plaintiff's Performance Feedback and Interactions with Supervisors

66. Plaintiff did not always surpass or achieve his sales goals at Breitling. *See* Plaintiff Dep., Exhibit D, 34:19-35:20; *see also* Prissert Decl. at ¶ 42.

67. During Plaintiff's employment at Breitling, he received negative feedback about his performance from Ms. Bodman, Mr. Prissert, and Mr. Anderson. *See* Plaintiff Dep., Exhibit D, 121:22-122:4.

68. Plaintiff testified that Ms. Bodman gave Plaintiff negative feedback about his schedule and about “trying to get a certain account’s numbers up and asking why that specific account wasn’t doing better.” *See id.* at 122:5-9, 123:23-124:4.

69. Plaintiff testified that Mr. Anderson criticized Plaintiff’s performance on similar topics that Ms. Bodman had criticized, including questioning Plaintiff’s schedule, how many visits Plaintiff had made, and regarding the performance of certain accounts. *See id.* at 124:21-125:21.

70. Plaintiff testified that Mr. Prissert criticized Plaintiff’s performance about the “numbers per account,” certain accounts that were not performing, and Plaintiff’s schedule. *See id.* at 126:13-17.

71. Plaintiff testified that Mr. Anderson and Mr. Prissert asked him to make more sales visits. *See id.* at 131:9-13.

72. While employed at Breitling, Ms. Bodman, Mr. Prissert, and Mr. Anderson told Plaintiff his sales numbers were low. *See id.* at 133:11-18.

73. On October 19, 2010, Ms. Bodman sent Plaintiff the email annexed as Exhibit “L,” that read, in part, “visiting 4 doors in 4 days is not what someone who makes over 200K a year can keep on doing.” *See* Exhibit L.

74. On June 14, 2011, Mr. Prissert sent Plaintiff the email annexed as Exhibit “M”, that read, in part, “I am almost speechless when I read your call report...No visits on June 7 and 8..?!...That is not at all what I expect from you or any other rep, furthermore that we agreed to reduce your territory last Thursday (because you said you were overwhelmed and was working too much) and expect you to schedule travel and visit more accounts every week...” *See* Exhibit M.

75. Plaintiff responded to Mr. Prissert's June 14, 2011 email, writing, in part: "I only wish I was sitting around having margaritas while I am not at a store as you all seem to think." *See id.*

76. On February 15, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit "N", that read, in part, "My surprise was to see office days on Monday and Tuesday last week-meaning there were three in a row. We simply can't stay behind our desks and accomplish our goals...Looking at the month there are not a lot of visits...I/we are here to help in any way we can..." *See* Exhibit N.

77. On July 16, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit "O" that read, in part, "Attached are your June 30 results...There are some concerns with the results..." *See* Exhibit O.

78. On July 23, 2012, Mr. Prissert sent Plaintiff the email annexed as Exhibit "P", that read, in part, "Hope you can catch up to the \$15,400,000 target...Good luck to you..." *See* Exhibit P.

79. On August 13, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit "Q", that read, in part, "the average price of pieces sold is the lowest of the regions...if you were to match the B[reitling] USA average this year it would be...reducing your shortfall." *See* Exhibit Q.

80. On September 26, 2012, Mr. Prissert sent Plaintiff the email annexed as Exhibit "R", that read, in part, "We are very concerned that the results in your region are still far behind expectations and also the only region double digit down versus last year numbers...you are -19% versus 2011...the only other region behind last year is -3% versus last year...In 2011, your territory was already the least performing one (growth over 2010) which means , as we discussed

several times, that Breitling business is ‘melting’ in the Northeast 1 and we are loosing [*sic*] market share in your area since January 2010...I am very concerned that you might not reach **any** of the goals, we set in January, (quantitative and qualitative) for your territory...We are running out of time!” *See* Exhibit R.

81. On October 5, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit “S”, that read, in part, “With respect to your region, we see that the total sell in is the most challenged area for B[reitling] USA down 19.9% versus 2011 YTD.” *See* Exhibit S.

82. On March 5, 2013, Mr. Anderson sent Plaintiff the email annexed as Exhibit “T”, that read, in part, “Your region has suffered a lot over the last two years and falling short this year is not an option. I will help you in any way I can.” *See* Exhibit T.

83. On May 24, 2013, Mr. Anderson sent Plaintiff the email annexed as Exhibit “U”, that read, in part, “You have a very important region and not so long ago when I was still covering MD and VA, it was the second most sales generating region we had. Today, it has fallen back dramatically in sell in....” *See* Exhibit U.

84. On June 4, 2013, Mr. Prissert sent Plaintiff the email annexed as Exhibit “V”, that read, in part, “I am concerned in the trend of your numbers...We heave [*sic*] been repeating again and again that your schedule of visits is too light and that you should spend more time at the store...Your results...show me that you are not really using all the tools you have or capitalizing on opportunities...In other words, you keep doing it your ways and ate [*sic*] the pace you think is right...I just want to reiterate that achieving your target is key to us and for you (especially this year, after your region has been reduced so you can focus on less accounts and be more productive)...Finally, I want you to succeed and achieve your goals but I am not sure you are doing all that you can and need to be doing to make it happen.” *See* Exhibit V.

85. On September 11, 2013, Mr. Prissert sent Plaintiff the email annexed as Exhibit “W”, that submitted to Plaintiff his new sales goals, and that read, in part, “Hope you make it happen in the next months...Wishing you to succeed!” *See* Exhibit W.

86. Plaintiff testified, with regard to the September 11, 2013 email from Mr. Prissert (Exhibit W and marked at Plaintiff’s deposition as Exhibit B-24) that he believed that Mr. Prissert wanted Plaintiff to succeed. *See* Plaintiff’s Dep., Exhibit D, at 236:19-237:16

87. Plaintiff received the Mid-Year 2011 performance review annexed as Exhibit “X”, which states, in part, “Fred’s territory is not performing as it should.” *See* Exhibit X.

88. Plaintiff received the Year-end 2011 performance review annexed as Exhibit “Y”, which states, in part, “Fred had a tough year and missed his target by \$5 mio[sic]!..Fred did not send all his call reports.” *See* Exhibit Y; *see also* Plaintiff’s Dep., Exhibit D, at 186:6-16.

89. Plaintiff received the Year-end 2012 performance review annexed as Exhibit “Z”, which states, in part, “Sales were down in 2012...” *See* Exhibit Z; *see also* Plaintiff’s Dep., Exhibit D, at 192:18-193:9.

90. At the 2012, Breitling sales meeting, Plaintiff stated, in front of all of the other sales representatives, that he would only work until 5 o’clock. *See* Plaintiff Dep. at 148:17-151:3.

91. In Plaintiff’s 2012 self-evaluation, in response to the question “Would he/she be better in another position?”, Plaintiff wrote “Yes, president.” *See* 2012 Self Evaluation annexed as Exhibit “AA”; *see also* Plaintiff’s Dep., Exhibit D, 175:10-177:17

92. At a Breitling event in Reno in 2012, Plaintiff lost his temper. *See* Plaintiff’s Dep., Exhibit D, at 166:10-11.

93. On September 18, 2012, Plaintiff received a written warning from Mr. Prissert, which stated, among other things, that Plaintiff engaged in inappropriate behavior and language and cursed at Mr. Prissert, the President of Breitling, in front of colleagues and guests at a bowling outing in Reno on September 16, 2012. *See* Written Warning Email, annexed as Exhibit “BB”, *see also* Plaintiff’s Dep. at 169:24-170:3.

94. On April 9, 2012, Plaintiff received an email from Mr. Prissert, annexed as Exhibit “CC”, in which Mr. Prissert informed Plaintiff that it was not acceptable at Breitling to give cash envelopes to colleagues. *See* Exhibit CC.

Plaintiff’s Sales Goals and Sales Performance

95. The sales goal that was set by Breitling for Plaintiff at the beginning of 2011 was 24,995,000 (including Tourneau sales). *See* Plaintiff’s 2011 employment contract, Exhibit I (at 0000065).

96. During 2011, Plaintiff’s sales goal was reduced to \$23,760,000. *See* Exhibit K (at BREITLING_9052); *see also* Anderson Decl. at ¶ 27.

97. Ms. Bodman made the ultimate decision on how much to set Plaintiff’s 2011 sales goal. *See* Prissert Decl. at ¶ 22.

98. In 2011, Plaintiff’s sales at Breitling were approximately \$18,767,811, including Tourneau sales. *See* Exhibit K (at BREITLING_9031 and BREITLING_9052); *see also* 2011 Sales Chart annexed as Exhibit “DD” (BREITLING_8804); Anderson Decl at ¶ 28.

99. Plaintiff’s 2011 sales were approximately \$4,992,189 less than the sales goals that had been set for him that year, and he achieved only 79% of his set sales goal. *See id.*

100. In 2011, Breitling employed Breitling employed seven sales representatives. *See* Prissert Decl. at ¶ 20.

101. In 2011, Plaintiff was the sales representative who achieved the lowest percentage of his sales goals. *See* Anderson Decl. at ¶ 29.

102. Plaintiff's 2011 sales were approximately \$850,645 more than Breitling had sold to the same territory the year prior (an increase of 5%). *See* Exhibit DD; *see also* Exhibit K (at BREITLING_9052) *see also* Anderson Decl. at ¶ 30.

103. In 2011, Plaintiff was the sales representative who increased his sales as compared to the same territory the prior year by the lowest percentage (5%) out of seven sales representatives. *See* Exhibit K (at BREITLING_9052); *see also* Anderson Decl. at ¶ 30.

104. On December 20, 2011, Plaintiff emailed Mr. Prissert and Mr. Anderson, attaching his proposed sales goals for the upcoming year, 2012, in which he projected his sales would be \$16,475,000, excluding Tourneau sales. *See* Email dated December 20, 2011, Exhibit EE.

105. At the beginning of 2012, the sales goal that was set by Breitling for Plaintiff (excluding Tourneau) was \$16,500,000. *See* Plaintiff's 2012 Employment Agreement, Exhibit I (at BREITLING_577).

106. Mr. Prissert was the person who ultimately made the decision in setting Plaintiff's 2012 sales goal, in consultation with Mr. Anderson. *See* Prissert Decl. at ¶ 24; *see also* Anderson Decl. at ¶ 31.

107. In July 2012, Mr. Prissert decided to reduce Plaintiff's sales goal by 1.1 million dollars, down to \$15,400,000 (excluding Tourneau sales). *See* 2012 Goal Reduction Email, as Exhibit FF.

108. In 2012, Plaintiff's sales at Breitling were approximately \$12,899,581 (excluding Tourneau sales). *See* 2012 Sales Chart, Exhibit GG (at page 0000293), *see also* Exhibit K (at

BREITLING_9065 and BREITLING_9073); 2012 NE1 Sales Chart, Exhibit HH (BREITLING_8808); Anderson Decl. at ¶ 32.

109. Plaintiff's 2012 sales were approximately \$2,500,419 less than the sales goals that had been set for him that year (he achieved only 83.76% of his sales goal). *See id.*; *see also* Anderson Decl. at ¶ 32.

110. In 2012, Breitling employed seven sales representatives. *See* Prissert Decl. at ¶ 23.

111. In 2012, Plaintiff was the sales representative who achieved the lowest percentage of his sales goals. *See* Exhibit K (at BREITLING_9073); *see also* Anderson Decl. at ¶ 33.

112. Plaintiff's 2012 sales were approximately \$938,000 less than Breitling had sold to the same territory the year prior (a decrease of approximately 6.8%). *See* Exhibit HH (at BREITLING_8808); *see also* Exhibit K (at BREITLING_9065); Anderson Decl. at ¶ 34.

113. In 2012, Plaintiff was the sales representative whose sales, as compared to the same territory the prior year, decreased by the highest percentage (6.8%). *See* Exhibit K (at BREITLING_9065); *see also* Anderson Decl. at ¶ 34.

114. The sales goal that was set by Breitling for Plaintiff at the beginning of 2013 (excluding Tourneau) was \$11,200,000. *See* Plaintiff's 2013 Employment Agreement, Exhibit I (at BREITLING_583).

115. Mr. Prissert was the person who ultimately made the decision in setting Plaintiff's 2013 sales goal, in consultation with Mr. Anderson. *See* Prissert Decl. at ¶ 24; *see also* Anderson Decl. at ¶ 35.

116. In September 2013, Mr. Prissert decided to reduce Plaintiff's sales goal by \$560,000, so that his new goal would be \$10,640,000 (excluding Tourneau sales). *See* 2013 Goal Reduction Email, Exhibit II.

117. In 2013, Plaintiff's sales at Breitling were approximately \$8,452,072 (excluding Tourneau sales). *See* 2013 Sales Chart, Exhibit JJ (BREITLING_633); *see also* Plaintiff's Dep., Exhibit D, 204:18-205:20; Anderson Decl. at ¶ 36.

118. Plaintiff's 2013 sales were approximately \$2,187,928 less than the sales goals that had been set for him that year (he achieved only 79% of his sales goal). *See* Exhibits II, JJ, *see also* Anderson Decl. at ¶ 36.

119. In 2013, Breitling employed eight sales representatives. *See* Prissert Decl. at ¶ 23.

120. In 2013, Plaintiff was tied for achieving the second lowest percentage of his sales goals. *See* Anderson Decl. at ¶ 37.

121. Plaintiff's 2013 sales were approximately \$1,357,393 less than Breitling had sold to the same territory the year prior (a decrease of approximately 13.8%). *See* Exhibit JJ; *see also* Anderson Decl. at ¶ 38.

Changes to Plaintiff's Sales Territory and the Promotion of Isaac Schafrath

122. At the beginning of 2011, Plaintiff was given additional territory for which he would be responsible as a sales representative; he received approximately 20 additional "doors" or accounts to cover. *See* Prissert Dep., Exhibit E, 165:10-13; *see also* Prissert Decl. at ¶ 32.

123. The additional territory that Plaintiff was assigned to cover at the beginning of 2011 had previously been serviced by Mr. Anderson. *See* Anderson Decl. at ¶ 5, 9.

124. Plaintiff testified that Ms. Bodman was the one who decided to assign him the new territory in the beginning of 2011 that had previously been serviced by Mr. Anderson. *See* Plaintiff Dep., Exhibit D, 73:8-22.

125. Part of the territory that was added in 2011 to Plaintiff's responsibility included Southern Virginia. *See* Anderson Decl. at ¶ 10.

126. Because Plaintiff had been assigned the additional territory, Breitling increased his bonus potential from \$45,000 to \$55,000. *See* Prissert Decl. at ¶ 32.

127. During 2011, Plaintiff requested that Southern Virginia territory be assigned to a different sales representative, and in the first half of 2011, the Southern Virginia territory was reassigned to sales representative Rick Lambert. *See* Prissert Decl. at ¶ 33; *see also* Anderson Decl. at ¶ 11.

128. When the Southern Virginia territory was reassigned to Mr. Lambert, Plaintiff's bonus potential was not reduced. *See* Prissert Decl. at ¶ 33.

129. When Mr. Lambert's was assigned the Southern Virginia territory, his salary and bonus potential were not increased. *See* Prissert Decl. at ¶ 33; *see also* Anderson Decl. at ¶ 12.

130. At the end of 2012 or the beginning of 2013, Mr. Prissert decided to reduce the territories that Plaintiff and sales representative Annie Sommer had previously covered in 2012. *See* Prissert Dep., Exhibit E, at 86:8-22; *see also* Prissert Decl. at ¶ 34.

131. Mr. Prissert discussed this decision with Mr. Anderson and Mr. Amstutz. *See id.* at 86:23-87:14

132. Mr. Prissert testified that the reason he reduced the territories of Ms. Sommer and Plaintiff was because: (i) the sales performance of these two sales representatives for 2012 was below expectations; (ii) Mr. Prissert wanted to give both individuals a chance to succeed in a

smaller territory; (iii) they were not handling the larger territory in the right manner, and (iv) sales in the two territories were not where they needed to be and the salespeople were not achieving their goals in those territories, so they needed restructuring. *See* Prissert Dep., Exhibit E, at 87:15-24.

133. In 2013, at the time that Plaintiff and Ms. Sommer's territories were reduced, Mr. Prissert decided to reduce their base salaries as well. *See* Prissert Decl. at ¶ 36.

134. In 2013, Plaintiff's base salary was reduced to \$196,000. *See* Anderson Dep., Exhibit H, at 333:3-5; *see also* Prissert Decl. at ¶ 30.

135. Mr. Prissert was 44 years old at the time he decided to reduce Plaintiff's salary. *See* Prissert Decl. at ¶ 37.

136. Mr. Prissert testified that at the same time that Mr. Prissert decided to reduce Plaintiff's territory and salary, a new sales representative would need to be added to cover territory removed from Ms. Sommer and Plaintiff. *See* Prissert Dep., Exhibit E, at 88:20-89:13.

137. Mr. Prissert decided to promote Isaac Schafrath, who had previously been the Vault Manager at Breitling, to sales representative. *See* Prissert Decl. at ¶ 39.

138. Mr. Prissert testified that the reason he decided to promote Mr. Schafrath to the sales representative position was that: (i) Mr. Prissert preferred to promote someone from within the company, (ii) he wanted to give a chance to an employee of the company who had worked for Breitling for many years, (iii) Mr. Schafrath was performing well in his current job, (iv) Mr. Schafrath had expressed a desire to do something else within the company, (v) Mr. Schafrath knew the brand very well, and (vi) Mr. Schafrath knew the product very well. *See* Prissert Dep., Exhibit E, at 92:19-94:2.

Miscellaneous Topics:

139. Plaintiff never made a complaint to anyone at Breitling that he was being harassed or treated differently because of his age, sexual orientation, or gender. *See* Plaintiff's Dep., Exhibit D, at 288:12-21.

140. The yearly watch and jeweler show in Basel, Switzerland that the sales representatives attended, was so crowded that there was a shortage of hotel rooms and the Breitling sales representatives who attended had to share rooms. *See* Sommer Dep, Exhibit G, at 15:19-23; *see also* Anderson Decl. at ¶ 39.

141. On March 15, 2011, Plaintiff sent an email to Monika Pieren, the head of events at Breitling Switzerland, requesting a specific kind of room for himself and Ms. Sommer for the Basel, Switzerland trip, and wrote in the email "Annie and I are rooming together this year because of the mix of men and women from the US...Annie and I have shared rooms all the years we have attended. I think this is my 18th, Annie's 17th." *See* March 15, 2011 Email, Exhibit KK; *see also* Plaintiff's Dep., Exhibit D, at 108:5-21.

142. Annie Sommer is a good and close friend of Plaintiff's, and was his closest friend at Breitling. *See* Plaintiff's Depo., Exhibit D, at 103:19-104:12

143. Plaintiff has socialized with Ms. Sommer outside of work and they have been to each other's homes. *See id.*

144. Ms. Sommer does not believe that Mr. Cargian was treated any worse than anyone else at Breitling because he's gay. *See* Sommer Dep., Exhibit G, at 39:24-40:3.

145. Ms. Sommer and Plaintiff have taken vacations together. *See* Sommer Dep., Exhibit G, at 62:22-63:16.

146. Ms. Sommer and Plaintiff have shared rooms on some of those vacations that they took together. *See id.*, at 63:17-20, 71:21-25.

147. Mr. Prissert never made any comments to Plaintiff about his age. *See* Plaintiff's Dep., Exhibit D, at 293:18-20.

148. Mr. Prissert never made any comments to Plaintiff about his sexual orientation. *See id.* at 293:21-23

149. Other than one comment where Plaintiff claims Mr. Prissert called him "darling", Mr. Prissert made no comments to Plaintiff about his gender. *See id.* at 294:5-8.

150. Plaintiff claims that Mr. Anderson made only one joke about Plaintiff's age, saying "you're so old, you wouldn't remember that – you probably didn't remember that." *See id.* at 272:24-273:19.

151. The only comments that Mr. Anderson made regarding Plaintiff's sexual orientation was saying something like "because you're gay, you didn't get that" with regard to "numbers" or something they ate at dinner, and besides that, no other comments about Plaintiff's sexual orientation. *See id.* at 292:2-25.

152. In 2013, Breitling uncovered the fact that sales representative Brian Criddle had misrepresented his customer visits, submitted false expense reports to Breitling for personal expenses, and misused his Breitling credit card. *See* Prissert Dep., Exhibit E, at 61:19-62:15; *see also* Anderson Dep., Exhibit H, at 102:7-19.

153. After Mr. Anderson saw a discrepancy in Mr. Criddle's expense report, he conducted an investigation and made the determination that Mr. Criddle had been untruthful on his reporting to Breitling. *See* Anderson Dep., Exhibit H, at 103:5-12.

154. As a result of Mr. Criddle's misrepresentations, he received a written warning from Breitling. *See* Prissert Dep., Exhibit E, at 64:24-65:9.

155. Mr. Prissert was the person who decided to give Mr. Criddle the warning. *See id.*

156. Once Mr. Prissert learned of Mr. Criddle's untruthful reporting to Breitling, Mr. Prissert decided to give Mr. Criddle the written warning, regardless of Mr. Criddle's explanation and whether Mr. Criddle admitted his wrongdoing or not. *See* Prissert Dep., Exhibit E, at 68:13-69:5; *see also* Prissert Decl. at ¶ 54; Anderson Dep., Exhibit H, at 109:22-110:3.

Plaintiff's Termination

157. On or about December 13, 2013, Breitling informed Plaintiff that it would not be renewing his employment contract and would be terminating his employment with Breitling, effective December 31, 2013. *See* Plaintiff's Dep., Exhibit D, at 216:8-217:12.

158. It was Mr. Prissert who ultimately decided to terminate Plaintiff's employment at Breitling. *See* Prissert Decl. at ¶ 48.

159. Mr. Prissert, was 45 years old at the time he decided to terminate Plaintiff from Breitling and at the time Plaintiff was informed that he would be terminated from Breitling. *See* Prissert Decl. at ¶ 50.

160. At the time Plaintiff left the employment of Breitling, in December 2013, there were 7 other sales representatives working at Breitling: Annie Sommer, 47 years old, Beth Haddad, 45 years old, Brian Criddle, 48 years old, Josh Haley, 40 years old, Patrick Cawthorne, 49 years old, Rick Lambert, 47 years old, and Isaac Schafrath, 33 years old. *See* Prissert Decl. at ¶ 51.

Dated: February 29, 2016
New York, New York

FOX ROTHSCHILD LLP

/s/ Zev Singer

By: _____

Glenn S. Grindlinger

Zev Singer

100 Park Avenue, Suite 1500

New York, New York 10017

(212) 878-7900

Attorneys for Breitling USA, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICK M. CARGIAN,

Plaintiff,

against

BREITLING, USA, INC.,

Defendant.

**15 CV 01084 (GBD)(HP)
Plaintiff's Rule 56.1 Opposition To
Summary Judgement and In
Support Of His Claim**

Pursuant to Local Rule 56.1, Plaintiff responds to Defendant's Rule 56.1 statement as follows:

2. It was generally known by Breitling USA ("Breitling" or "defendant") employees, including management, that plaintiff is gay. Goodman Ex. 9¹; Ex. 27, Prissert Tr. 61:13-15; Ex. 19, Morice Tr. 25:6-26:11; Ex. 28, Figueroa Tr. 153:12-19; Ex. 7, Roman Tr. 102:14-24.

10. Not material fact.

11. Not material fact.

14. In 2011, plaintiff was assigned Maryland, Virginia and D.C. previously assigned to Anderson. Delaware was assigned to him in 2010. At the same time Josh Haley ("Haley") was

¹ Unless otherwise stated reference is to Exhibits attached to Goodman Affirmation.

assigned parts of Florida previously assigned to Anderson. Cargian Tr. 67:12-72:5; Ex. 4; Def. Admissions ¶¶12, 29.

17. Uncorroborated statement inadmissible in light of Defendant's refusal to produce Bodman for deposition. Defendant's allegation is contested by plaintiff's claim that to his personal knowledge Prissert set the goals. Cargian Aff. ¶ 15; Ex. 9, Cargian Tr. 222:25-223:16; 225:15-226:14.

18. See ¶ 17 supra. Also, defendant's veiled claim that Prissert followed Bodman's formula which explains why the 2011 goals were so high is contradicted by the fact that Plaintiff achieved the realistic goals established by Bodman from 2002 and onward. Cargian Aff. ¶ 8, 9.

19. In 2011 Thierry Prissert ("Prissert"), President of Breitling, Charles Anderson ("Anderson" or "Chuck Anderson"), Sales Manager, Sebastian Amstutz ("Amstutz"), Vice President of Administration, conducted the performance review process. Marie Bodman participated, however, it was Prissert who determined the sales goals for 2011. See ¶ 17 supra.

20. Plaintiff did not report to Bodman in 2011. The full quote reads: **Q.** Starting 1/1/11 you were reporting to Ms. Bodman and Mr. Prissert. **A.** Mr. Prissert Yes. Ex. 9, Cargian Tr. 61:8-18.

28. The criteria elaborated by defendant only applied in 2012. Under Prissert there were open ended subjective criteria. For example, in 2013 60% of the qualitative portion of the bonus was for "overall quality of work" which although listed certain factors such as "Reporting, Training, visits and planning, Company policy" there was no arithmetic formula to determine how each formula was measured. In 2013 Plaintiff was given the lowest rating for qualitative

bonus, thousands of dollars less than Rep. "X" who falsified call reports and expense records. Discussed further *infra*. Ex. 36, (Breitling 8984, 8952).

29. To the extent that a formula is applied, the value percentage may be the same for each rep, but the absolute achievement numbers will vary. For example, in 2012 Cargian was expected to make 275 visits and open 3 new qualified doors, whereas Rep X only had to open 2 new doors to make his qualitative bonus, and Patrick Cawthorne only had to make 250 visits. Management controlled the setting of those goals which differed between and among the reps. Ex. 35 (Breitling. 011, 8939-8944).

32. 2012 was not a particularly good year from Breitling. The overall increase in sales was 2.5% as compared with 2011 where the increase was 25.3% or 2010 when the increase was 34%. Goodman Ex. 10, 33, Cargian Aff., Ex. A, Pl. 0000280. The reps were never told that there was a formula used for determining the amount of the "special bonus" Cargian Aff. ¶ 21.

33. This is an uncorroborated statement by an interested party which the jury is not required to believe.

38. The President had the final say regarding the sales goals. In 2011, Cargian complained from the outset that there was no way that he could be expected to meet the huge increase in his goals for 2011, but his position was dismissed. Ex. 9, Cargian Tr. 208:13-21; 222:25-223:16; 225:15-226:14.

39-41 Tourneau, with corporate offices in New York City, is the largest luxury watch retailer in the world. Cargian originally opened the account for Breitling in the 1990s and continued to service the corporate account until his termination. Since Corporate bought for all of their stores nationally, plaintiff had the major responsibility for sales to the Tourneau stores.

However, the rep for the region would get credit for the sale, until 2012 when it became a house account and the house took the sales credit. Cargian also serviced the account, which included bi-monthly meetings with buyer, analyzing sales data; attending quarterly advertising and marketing meetings, overseeing accounts receivable; negotiating premium display positions; and training Tourneau's telemarketing department. Plaintiff estimates that he spent anywhere from 4-10 hours a week on Corporate Tourneau matters. Plaintiff continued his corporate responsibilities for sales to Tourneau even after it became a house account participating in sales meetings; marketing events, coordinating training; backup paper work. In addition, Plaintiff continued to service the Tourneau sales in his region. Cargian Aff. ¶ 10, 16.

42-50. The computer system was not fully operated until 2011. Ex. 26, Amstutz Tr. 44:3-15. Moreover, Breitling never turned over the underlying documents supporting its summary conclusions, and often witness could not identify how they came up with their figures. Goodman Aff¶. This is particularly true for Defendant's Ex. K, Anderson's PowerPoint charts, heavily relied upon by Defendant for its conclusory analysis. Goodman Ex. 26, Amstutz Tr. 37:9-14; 38:2-20. These charts were manually generated by Anderson, and some of the data conflicted with other charts produced by Defendant. When witnesses were asked to explain the contradictions in the figures of the various charts, they could not. Id Amstutz Tr. 75:5-23; 125:5-126:7. Defendant's reliance on Sommer's testimony is misplaced. First, it was clear she was having trouble understanding defense counsel's question. Ex. 12, Sommer Tr. 69:25-70:7. As she testified, adjustments were made to the material she received and that was done manually; she did not know if the underlying material that was presented to her was accurate; basically she never knew if the figures they gave her were right or wrong, she just checked to see "if they looked right". Id. Sommer Tr. 79:17-83:14. The only sales figures that plaintiff can verify are

those reflected in Ex. A to his affidavit, which are based on Breitling records. See Goodman Aff. ¶ 4-6.

54. Not a material fact. As defendant admitted, Prissert only hired one person Isaac Schafrath (“Schafrath”). This does not address the salaries of plaintiff or the other sales reps, except Schafrath, all hired by Marie Bodman (“Bodman”).

56. Plaintiff was the highest paid sales rep in 2011, because his prior boss, Bodman, valued his service and in 2008 increased his salary to \$230,000. During his three years working for Prissert, Cargian received no increases in salary and in 2013 Prissert decreased his salary by \$35,000. Cargian Aff. ¶ 11; Ex. 4, Def. Admissions.

58. Again this was a salary established by Bodman who had been very critical of the employee (Rick Lambert) including a threat to terminate his employment, as was Prissert. Ex. 4.

60-62. in 2012, Cargian continued to make \$230,000, while Prissert raised the salary of every other rep. Lambert was raised \$18,000 despite the fact that he did not reach most of his qualitative performance goals. Ex 4.

65. This sales person was the newly hired Schafrath who had absolutely no sales experience prior to his promotion from vault manager, where his major responsibility was overseeing the inventory. Ex. 14, Schafrath Tr. 131:24-132:11, Ex. 31-32.

66. Not material without comparison with comparators (the other sales resp.) Moreover, prior to Prissert setting of goals, Cargian always met or came close to his goals, except during the recession when no rep did. Cargian Aff. ¶ 9, 21, Ex. A.

67-68. Every boss criticizes from time to time, but over-all Cargian had an outstanding career before the appointment of Prissert and was highly valued by Bodman. He opened the national Tourneau account and was given responsibility for Breitling's most important client; for 2002 through 2007 he increased his sales over the prior year from anywhere between 15% and 46%. He significantly exceeded his goals for three of those years, and attained 96% and 99% the other two years. In 2010 he increased his sales by 40% and had the highest gross sales. He received several awards for his achievements. Bodman increased his salary from a starting salary of \$35,000 to \$230,000 the highest paid rep. in recognition of his work. Cargian Aff. ¶¶ 8-9, Ex. A. Plaintiff's testimony of Bodman's respect is corroborated by the fact that after his termination she wrote a reference for him praising his "dedication to work," "integrity," "attention to detail," and knowledge. At the time, she was still employed by Breitling SA, Cargian Aff, Ex. B; and by Lisa Roman who was for many years the Director of Market and Training. Ex. 7, Roman Tr. 77:9- 79:4; 97:23-98:1; 85:14-:87:6.

69-71. Not material without comparative data. Moreover in support of the fact that Prissert and Anderson were papering Cargian's file, and holding him to a different standard, in 2012 plaintiff's bonus record shows that his goal was 275 visit and he met that 100% while also meeting his goal of opening 3 new doors. Goodman Ex. 35, Breitling 011. His goals were higher than his competitors. The goals for Haley, Lambert, and Cawthorn's were only 250 visits Ex. 35, Breitling 8942, 8939, 8943. Criddle also had a goal of 275 visits, but he too only had a 2 door goal for new business. Breitling 8940.

74. More papering of the files. A full reading of this document has Plaintiff's answer which was (1) it was a short week and (2) plaintiff nonetheless managed sales of \$620,000 through multiple phone visits. Def. Ex. M.

75. See 74 above. Defendant cherry picks and omits the fact that plaintiff sold \$620,000 worth of goods.

76-81. Plaintiff submits that Prissert and Anderson were papering his file to prepare for termination. 2012 was an unproductive year for the entire staff. Ex. 10, 15, 33. Anderson concedes that plaintiffs “territory has changed dramatically over the last few years” and that business was down for Rolex and Omega. As Anderson said “everyone is struggling.” Def. Ex. U. Moreover, Defendant’s own documents show that Plaintiff met his sales visit goals, and was making more visited than most of his comparators. Ex. 35, Breitling 011.

82-85. Plaintiff’s was demoted effective 2013; a significant part of his territory was assigned to an inexperienced new sales rep and his salary was decreased by \$35,000. The offer to “help” is belied by the fact that Prissert increased his goals by 14%, while all the other reps, except Sommer were increased by 8%-10%. Cargian Aff. ¶ 25; Ex. 12, Sommer Tr. 59:9-14; 85:7-87:15. In 2013 sales reps X, Haley, and Haddad lost more sales than Cargian, yet seemingly no reprimands were said to them. In fact, in 2012 every sales rep but Lambert lost business. Ex. 16, Breitling 633. Further, defendant cherry picks the negative statements and does not mention the comment about the new account plaintiff opened, or the fact that plaintiff stays on top of payables better than the rest and how the staffs all like plaintiff and enjoy his visits. Def. Ex. U, Breitling 606.

86. Omitted is the following testimony by Plaintiff: “I don’t think he really would [want me to succeed] because he was, that year [2013], constantly treating me different from all the straight guys that worked at the company...I don’t think overall that he did [want me to succeed].” Ex. 9, Cargian Tr. 237:17-25.

88. 2011 was the year that plaintiff's goals were unobtainable, Prissert having increased them by 92% where no other rep was increased more than 76%. Cargian Aff. ¶¶ 14, 18; Ex. 4, Def. Admissions 34-54.

90. Defendant is aware that this was not a serious comment. At this sales meeting reps were told that his goal was at least 4% higher than anyone else; that the reps were losing their comp days; that the mandatory vacation time at Christmas and in the summer would be charged to their earned vacation. Also, it was at this meeting in 2013 that plaintiff was told that his territory was reduced and he was losing \$35,000 in salary. He, therefore, sarcastically said the work week should be reduced to go with these reduction. However, he continued to work as hard as ever, as reflected by the records which show he hardly ever used all of his comp time. Ex. 24; Ex. 12, Sommer Tr. 85:7-87:15.

91. Breitling's Human Rights Manager, Diana Figueroa ("Figueroa"), testified that self-evaluations are not taken seriously and are not a very effective tool. Plaintiff always returned his, but to the extent any of the sales reps bothered to even fill it out, everyone gives themselves a "5" the highest mark. Ex. 28, Figueroa Tr. 142:7-18, 141:17-19; 145:3-22.

92-93. Again defendant misleads by cherry picking deposition testimony. Cargian denies and did deny improper behavior at the Reno client event. His testimony is supported by others, and defendant's statements are inconsistent. Plaintiff did not curse at anyone, and certainly not at Prissert, although he did express in a general way his concern about being mistreated. Since the bowling area was huge (78 lanes) and noisy, Prissert's claim that he heard anything is his uncorroborated statement. In contrast, Sommer corroborated Cargian's version of events. Amstutz admits he was not in the area and heard and saw nothing, his only information came from Prissert. Ex. 26, Amstutz Tr. 214:6-218:4. Most significantly, Prissert sent plaintiff a

warning letter threatening termination, which plaintiff testifies mischaracterizes the events, without even first speaking with him to ascertain the facts. Compare that to the warning letter sent to Rep “X”² when it came to management’s attention that he lied on his call reports and claimed over \$8,000 in personal expense as business expenses. Ex. 25. In contrast, when Prissert and Amstutz learned of the accusations against “X” they met with him to hear what he had to say before deciding what action to take. Also, although Prissert in the warning letter says that plaintiff used the “f...” word in front of clients, that contradicts what he said in his original written statement to Amstutz when he claimed it was in the “vicinity” of clients. Ex. 9, Cargian Tr. 127:2-128:21; 168:17-169:15; Ex. 12, Sommer Tr. 60:12-61:21; 87:16-89:13. Goodman Aff. Ex. Breitling.

94. It was not against company policy to give associates cash gifts at Christmas. Ex. 28, Figueroa Tr. 52:24-53:8. Cargian had been giving cash Christmas gifts to assistants for years and it was always known by President Bodman who raised no objection. Cargian Aff. ¶ 29 and 30.

97. Prissert had the ultimate authority over the setting of the 2011 goals. Ex. 9, Cargian. Tr. 208:7-8; 225:15-226:11. Prissert assertion that Bodman set the goals is uncorroborated. A jury is not required to believe uncorroborated statements by interested witnesses. Moreover, Defendant’s refusal to produce Bodman for a deposition make this statement even more untrustworthy. Goodman Aff. ¶ 2.

² Although defendant felt free to publicly identify the rep. plaintiff believes it is not necessary, and that defendant may be violating CT law relating to employee records. Where possible, as relates to this incident, plaintiff will refer to the individual as “X”.

98. Not admissible evidence. The power point presentations were manually compiled by Anderson and the underlying documents were never produced nor authenticated and conflict with other documents produced. See ¶ 44-50 supra.

99. Not admissible evidence since it is based on unreliable, manually gathered documents, where underlying documents were never produced.

101. Not admissible. What is agreed upon is that in 2011 plaintiff was the sales representative who had the highest sales goals and was given the greatest increase in goals over the past year. Ex. 4, Defendant's Admissions ¶¶ 34-54.

102. Not admissible evidence for the reasons stated above. In addition the prior year referred to is 2010. Defendant requested production of the power point records for 2010. On February 2, 2016, after discovery closed, defendant stated it refused to produce on the grounds that it was not relevant. Defendant cannot now rely on evidence that it denied plaintiff on the ground of relevancy. Ex. 39.

103. Not admissible. See Goodman Aff. ¶¶ 44-50, 98-99 101-102 supra.

104. In addition to not being legible, this document has never been authenticated as the document sent with the email.

107. In July 2012 Prissert reduced the sales goals of all sales reps based on difficult sales climate. Ex. 34, Breitling 9087-9098.

109. The document relied upon is not admissible. See ¶¶ 45-50, 98, 99, 101, and 102 supra. A clue to the unreliability of all of these statistics is the fact that defendant, who controls the information, alleges only that the numbers presented are "approximate". Prior to Prissert, all

sales reps knew the goals of the others. Starting in 2011 Prissert no longer published that information. Cargian ¶ 18. However, since defendant relies on uncorroborated documentation, than it concedes that in 2012 no sales rep, except Lambert achieved goal, and Lambert only sold \$21,437 above his goal. Def. Ex. K.

111-113. Not admissible evidence. See above.

116. Sales goals for all reps were reduced. Goodman Ex. 34.

118. In 2013, Plaintiff was demoted to a reduced territory. Plaintiff's sales goals for 2013 were nonetheless increased by 14%, when no other rep was increased more than 10% (except Sommer). Ex. 9, Cargian Tr. 149:5-12; Ex. 12, Sommer Tr. 85:7- 87:15, Cargian Aff. ¶ 34. Although plaintiff does not accept them as accurate, the charts relied upon by defendant concede that in 2013 "X" achieved only 75% of his goals and Haley only achieved 79% of his goals, the same as plaintiff. No one achieved their goal, except Lambert and that was only by about \$8,000. Also, as the evidence of the arbitrary establishment of goal in 2013 Lambert's (Rick) goal was decreased as was Cawthorne (Patrick) and Haddad. Because they had reduced goals, in 2013 is that Lambert and Cawthorne had the highest achievement of goals. Ex. 5, Breitling 636.

120. See response to ¶ 118 supra. Moreover, in addition to usual sales, plaintiff was told if he got corporate sales, a new area of sale, he would be rewarded with commission. He did make one corporate sale, but his YTD sales for 2013 does not reflect the value of that sale. Ex. 12, Sommer Tr. 20:9-13.

121. Not admissible. The information was never authenticated nor underlying documentation offered to establish how capability was determined.

122. This is uncorroborated testimony based solely on Prissert's affidavit. Defendant offers no documentary evidence to support its claim that Plaintiff received 20 more doors and indeed refused to answer the request for admission regarding Haley and Cargian increase of doors in 2011. Although Defendant denied Plaintiff's numerous requests to qualify the answer as the rules require, and as defendant did when it suited its purpose. Cargian Aff. ¶ 17, Ex. 4, Def. Admissions ¶ 1 and 36.

124. Bodman participated in the process, however, it was Prissert who determined the sales goals for 2011. Ex. 9, Cargian Tr. 222:25-223:16; 225:15-226:14.

126. The reasons for the change in bonus goes to defendant's intent. There is no documentary evidence supporting Prissert's assertion. Plaintiff claims that increasing the potential bonus was meaningless. Plaintiff's goal was increased by \$12 million representing a 92% increase in the prior year's goal, higher than any other rep and a 58% increase over what he sold the prior year. Plaintiff on multiple occasions told management that the goal was totally unrealistic. In contrast, Josh Haley, who was assigned Anderson's Florida territory had his goals increased only a \$6.8 mill increase and only an increase of only a 38.9% increase over 2010 actual sales. Ex. 4, Defendant's Admissions ¶¶ 34-36, and 46-48; Cargian Aff. ¶¶ 14 and 15.

131-132. The jury is not required to believe the uncorroborated statement of an interested witness, Prissert. Moreover, Sommer testified that Prissert never mentioned performance as a reason for the change in territory. Prissert told her that the change was being made so that she and Fred could concentrate on making corporate sales and to give her more of a chance to be with her family. Ex. 12, Sommer Tr. 20:1-13. (emphasis added) There is also evidence that the decision to promote Schafrath was made well before the decision to split the territory. See Pl. 56.1 infra statement re: the promotion of Schafrath as the reason to terminate

Cargian. There is no documentation supporting defendant's claim as to when the decision to promote Schafrath was made. Ex. 13, Anderson Tr. 90:22-91:4.

135. Not material and irrelevant.

136. See ¶ 131-132 supra.

138. Although there were other employees within the company more experienced in sales than Schafrath. Prissert only considered Schafrath. Ex. 14, Schafrath Tr. 114:5-16; Cargian Aff. ¶ 24. Prissert knew that Schafrath had absolutely no sales experience. Anderson, his sales manager, did not think it a good idea and at the time said, it would "take some time to get the kid up to speed" (emphasis added). Ex. 13, Anderson Tr. 325:16-327:19. Vault manager, also called logistics manager, essentially conducts inventory, credits returns process sales orders maintains stock repairs and makes sure shipments are fulfilled. Ex. 32.

139. There was no meaningful mechanism particularly when the perpetrator of the conduct is the President. Haddad complained to Anderson, but he did not think it was worthy of raising with either Prissert or Figueroa, the Manager of HR. Roman wrote a letter contesting a reprimand, and received what was essentially a "how dare you" question me. Prissert sent Cargian a warning letter without any investigation of the facts and sent him a reprimand for alleged violation of a policy that did not exist. Ex. 37.

141. Contradicted by both Cargian and Sommer testimony. Defendant knows that they are misinterpreting the e-mail to Pieren and that both Cargian and Ms. Sommer were very upset by being assigned to share a room. No question but that everyone had to share rooms with someone. Breitling assigned the rooms, and simply told the rep with whom they would share. Sommer was told by Prissert that she was sharing with Cargian. She does not recall complaining

to him possibly because she was fearful of complaining to the President. Over the 18 years of attending the conference, plaintiff almost on all but one prior occasion a room with one of the male reps. Most of the time he shared with Rick Lambert. Many years earlier he had been assigned to share with Ms. Sommer, but that never happened again. Ms. Sommer and Plaintiff, although good friends, did not want to share a room and thought it inappropriate. Ms. Sommer was very uncomfortable, and because she was so upset Plaintiff tried to at least get a larger room to make it a bit more comfortable. When Plaintiff said over the 18 years they shared rooms, as defendant knows, he was simply referring to the fact that he understood that sharing was necessary, not that he and Ms. Sommer shared a room, which they had not. Cargian Aff. ¶ 17(c), Ex. 9, Cargian Tr. 100:3-101:11; Ex. 12, Sommer Tr. 16:11-18:10; 76:5-12.

142. Sommer testified that she would not lie under oath even for a very good friend. Ex. 12, Sommer Tr. 37:16-22. This is a credibility issue for the jury.

144. Inadmissible and irrelevant. Lay persons are not qualified to testify on the ultimate issue of law. Federal Rule of Evidence 701.

146. Defendant again knows it is misstating the testimony. Plaintiff and Sommer did not vacation together. What Sommer was referring to are the vacation trips that Bodman arranged for the reps to take time together before or after the Basel trip. The only other time that the two vacationed together is when Plaintiff attended Sommer's 50th birthday party along with her family and friends in Quebec. Ex. 12, Sommer Tr. 73:4-74:17.

152-156. The expense report falsifications were significantly more serious than expressed. For several months Rep "X" submitted call reports claiming to be visiting customers when in fact he was he was simply taking days off for personal enjoyment. For example, he

would claim expenses for travel to Las Vegas to make customer visits, when in fact he was in California. This went on for at least several months. Ex. 26, Amstutz Tr. 118:2-11; 127:24-128:21; 130:19-131:13; Ex. 13, Anderson Tr. 102:7-103:4; Ex. 27, Prissert Tr. 61:19-62:15. When questioned at first he continued to lie to his bosses. Ex. 13, Anderson Tr. 110:13-111:10.

Most significantly, no warning letter and no action was taken against “X” until there was a full investigation including interviewing X”. Ex. 26, Amstutz Tr. 218:12-219:11. Amstutz statement of the process contradicts Prissert who claims he took with or without meeting “X”. Prissert Decl. ¶ 54. Amstutz testified that Prissert wanted to talk with “X” before deciding what action to take. Id. Amstutz Tr. 132:2-3. He further testified that that was also Anderson’s position. Id. Amstutz, who it should be remembered is in charge of HR, testified that there was no disciplinary action taken against “X” except that he had to repay the money he improperly claimed. Id. Tr. 134:20-135:9 “X” was given a “warning” signed by the HR Manager Diane Figueroa, who was not involved in the investigation and has no responsibility for the sales force except for administrative processing of payroll etc. Ex. 28, Figueroa Tr. 79:12-22; Ex. 26, Amstutz Tr. 135:10-14. Contrast this treatment with the peremptory action taken against Cargian, without investigation, for allegedly cursing and the fact that he received a warning from the President of the company, not an uninvolved lower level manager. Also contrast with the reprimand by the President claiming he violated a policy which was not a policy at all.

157. Defendant’s citation to an unrelated matter appears to be a clerical error. On December 17, 2013, Plaintiff was told that he was terminated effective December 31, 2013, but that he should cease performing any duties for Breitling as of that day and he was to return all equipment promptly. Cargian Aff. ¶ 26.

160. In terms of head count plaintiff was replaced by a 33 year straight male, Isaac Schafrath, the inexperienced vault manager who was elevated the year before to take over part of plaintiff's territory. Schafrath failed not only in the amount of sale but also to communicate with clients and management and was terminated from his position as sales rep at the end of 2014. However, unlike plaintiff, another position was created for him. Ex. 14, Schafrath Tr. 276:15-277:3; 275:13-23; 277:2. See Def. 56.1 ¶ supra.

PLAINTIFF'S RULE 56.1 STATEMENT OF MATERIAL FACTS SUPPORTING HIS CLAIM

A. MACHO ATMOSPHERE WHICH EXCLUDES WOMEN AND GAY MEN

161. The President of Breitling SA, the parent company where staff goes annually for meetings, has prominently displayed in his office a picture of a female spread legged with an exposed crotch showing pubic hairs being leered over by a male figure on the brink of pouncing. Female employees are forewarned about entering. Ex. 19, Morice Tr. 103:25-104:18, Ex. 18.

162. The atmosphere at Breitling USA ("Breitling" or "defendant"), both in the office and in its sales program is overwhelmingly macho. Its merchandising is addressed to straight men. Ex. 8, Vessely Tr. 141:25-144:7, Ex. 17.

163. The boutique retail store operated by Breitling on East 57th Street Manhattan is filled with provocative paintings bordering on the pornographic. There is also a statue again of a scantily clad female with an exposed crotch area, though attired in panties, straddling what appears to be a phallic symbol. Cargian Aff. Ex. C; Ex. 19, Morice Tr: 106:23-107:11.

164. Breitling used images of half-clad females with exposed breasts and crotches in provocative poses as collateral material (coasters, iPad covers, mouse pads, etc.) to merchandise its goods. This material is used to entice heterosexual males. Ex. 27, Prissert Tr. 138:14-140:2; Ex. 8, Vessely Tr. 141:25-144:7.

B. COMPLAINTS OF GENDER BASED DISCRIMINATION AGAINST WOMEN AND PLAINTIFF

165. In June 2013, sales rep Beth Haddad (“Haddad”) sent emails to Sales Manager, Charles Anderson (“Anderson”), complaining that Prissert, the President of Breitling discriminated against her because of her gender. Ex. 20.

166. Haddad’s complaint was explicit: “I will not be treated like a second class citizen by [Prissert]... His comments about going to work with the girls in ch[Switzerland] is uncalled for, as is his treatment of the “boys vs the girls.” Id.

167. Anderson’s claim that he did not believe Haddad’s complaint was about gender (Anderson sworn declaration ¶ 14) is patently untrue. At his deposition Anderson was asked: “Q. Did you understand that Ms. Haddad was complaining that she was being treated unfairly because she was a woman. A. Yes.” Ex. 13, Anderson Tr. 54:10-15. He did not report the complaint to Figueroa or mention it to Prissert.

168. Lisa Roman (“Roman”)³, formerly the Director of Marketing and Training, complained of sex and age discrimination to Diane Figueroa (“Figueroa”), Manager of HR, describing the boy’s club atmosphere which excluded women and the Plaintiff. Ex. 7, Roman Tr. 34:13-35:2.

169. Roman testified that among other discriminatory acts, Prissert would call her “dear”. He did not call the men dear. Id Tr. 32:9-13.

170. Prissert called plaintiff “darling”. Ex. 9, Cargian Tr. 293:24-294:8.

³ Defendant may try to argue that Roman’s employment was terminated in 2014 and therefore is untrustworthy. That is clearly an issue of credibility that the jury can decide.

171. Roman was aware that other women complained including Haddad, sales rep Annie Sommer (“Sommer”) and Manager of Inside Sales, Susan McDonald (“McDonald”). Ex.7, Roman Tr. 36:12-38:1.

172. Roman testified that Prissert treated plaintiff differently than the men and, like the women, excluded him from his inner circle. Id Tr. 99:2-15, 101:12-21.

173. Sommer testified that women were excluded from contact with Prissert because of the boy’s club atmosphere. Ex. 12, Sommer Tr. 31:16-23, 46:11-20.

174. Both Sommer and Roman testified that plaintiff was excluded and treated like the girls. Ex. 12, Sommer Tr. 11:10-22, Ex. 7, Roman Tr. 98:16-99:15; 101:12-21.

175. Melissa Vessely (“Vessely”), the present Manager of Training, who was hired by Prissert, testified that Haddad did share with her concerns about treatment of the female reps. Vessely Tr. 111:14-112:3

176. Prissert did not accept complaints. Roman brought her concerns to the attention of Figueroa. Figueroa suggested that she submit a written response to Prissert’s letter of admonition. Roman did so only to be greeted by a letter from Prissert in which he expressed anger at her for daring to question his authority. In his response, Prissert said “Please understand they you have no say as to how, when or why warnings are delivered”. Ex. 7, Roman Tr. 38:14-39:11, Ex. 37.

177. Plaintiff complained to Roman that he was not invited to the celebrity golfing events which were, among other things, networking opportunities. Ex. 7, Roman Tr. 103:20-25.

178. Roman testified that she would receive lists of attendees to these golfing events from Prissert. She did not recall ever seeing Plaintiff's name on the list of invitees. Ex. 7, Roman Tr. 103:20-104:24.

179. Plaintiff and the 2 female reps were not invited to a major marketing event in Crewe, England, while all the men were invited. Breitling features a Bentley watch live. In 2013 Breitling organized a major trip to Crewe, England, home of Bentley, to promote sales of the Bentley watch with major customers. This was a prestigious event, plus a fun filled weekend with customers who were taken on plane rides and entertained in London. All of the male sales reps were invited to attend, except plaintiff. None of the female representatives were invited. Cargian. Aff ¶ 37a.; Ex. 7, Roman Tr. 91:13-15; Ex. 13, Anderson Tr. 287:6-288:8, 290:13-291:3; Ex. 27 Prissert 116:8-118:18.

180. Prissert claims that Breitling customers with the highest potential for Bentley sales were invited, together with their reps. Defendant's own submission supports the fact that plaintiff had a higher number of Bentley stores (which Breitling calls doors) than 2 of the men who were invited. Ex. 33⁴, Breitling 9063 shows that plaintiff had 25 Bentley doors as compared with Lambert, and Cawthorne with only 22 and 14 respectively. Both of them were invited. Haley had only one more Breitling more than plaintiff and he was invited. Anderson concedes that at least one of plaintiff's customers who was invited was a champion store, meaning it had a high potential for Bentley sales. Goodman Ex. 13, Anderson Tr. 300:22-302:7; Cargian Aff. ¶ 37a.

⁴ Although Plaintiff seriously questions the authenticity of this document, since Defendant chooses to rely on it, it is an admission against interest.

C. PLAINTIFF'S PERFORMANCE

181. Plaintiff had an outstanding career at Breitling until Prissert took over as President in 2011, at which point he was excluded from the mainstream of the company and, along with the women was treated as a second class citizen. See generally plaintiff's affidavit.

182. At the time of his hiring in February 1990 as the National Training Manager Breitling had very little exposure in the United States market with sales of only \$2M to \$4M and a staff of only 6 or 7. By 2013 sales grew to over \$100M and the staff to about 140. Pl. Aff. ¶ 8-10.

183. Plaintiff played a significant role in that growth of Breitling. Each year from 2002 through 2007, he increased his sales over the prior year from anywhere between 15% and 46%. Three of those years he was significantly over his sales goal by 118-130%. The two other years he attained 96% and 99% of budget. The recession hit in 2008 and 2009 and everyone lost sales and missed budget. By 2010 plaintiff again increased his sales by 40% and again had the highest gross sales of all reps. Id.

184. In addition, he opened the Tourneau account nationally. Tourneau is the largest luxury watch retailer in the world. The Corporate offices, located in New York, does the buying for its stores throughout the country. This was and is the single largest retail account for Breitling. Plaintiff continued to service that corporate account till his termination, as well as the eight (8) individual Tourneau Stores in the Northeast region. Cargian Aff. ¶¶ 10, 16.

185. Bodman had great regard for Cargian and his performance. His salary was \$35,000 increased to \$230,000 by 2008, which was the highest of any sales rep. Cargian Aff. ¶ 11. Upon his termination Bodman provided a letter of reference lauding him for his "dedication to the job"

“integrity” “attention to detail” and “knowledge”. She provided that endorsement, although she was still an employee of Breitling SA, the corporate parent. Cargian Aff. ¶, Ex B.

186. Roman, who was hired after Cargian, testified to his outstanding reputation. She testified that he was one of the top sales reps from 2002-2010; he had an outstanding reputation, he was easy to work with very responsible and responsive for his accounts; he was always good at getting accounts to marketing events and that Bodman had respect for him. Ex. 7, Roman Tr. 77:9-79:4; 97:23-98:1; 85:14-87:6;

187. Melissa Vessely (“Vessely”), who was hired by Prissert in 2012 and took over as Training Manager, similarly complimented plaintiff’s work. In terms of training, she described plaintiff as “very knowledgeable and well respected by the team.” Ex. 8, Vessely Tr. 110:14-17. She found him cooperative, liked by clients, helpful and generally did a good job. Ex. 8, Vessely Tr. 95:24-96:23; 100:20-24.

188. Plaintiff was also recognized by his peers and he was awarded several Breitling prizes for his work. In 2003 he was recognized by the NYSJewellers Assoc. as “Favorite Watch Rep.” Cargian Ex. C. He was awarded the Sully award by Breitling for producing the greatest increase in sales in 2010 over 2009. The award was presented to him by Anderson and Bodman. Ex. 13, Anderson Tr. 215:20-217:22.

D. DISCRIMINATORY SETTING OF SALES GOALS

189. Starting in 2011, when he was first appointed president, Prissert, made the final determinations regarding sales goals. Ex. 9, Cargian Tr. 222:25-223:16; 225:22-226:14.

190. In 2011 Prissert increased Cargian's goal from \$13,000,000 to \$24,995,000 which was an increase of \$11,995,000, \$12M representing a 92.2% increase over the prior year. Ex. 4, Def. Responses to Admissions, ¶¶ 33, 35.

191. Josh Haley ("Haley"), who was also assigned new doors, had his goals raised from \$10,660,000 to \$17,470,00 representing a 63% increase. Id ¶¶ 45-47

192. Patrick Cawthorne's ("Cawthorne") were raised by only \$3M. Id ¶¶

193. Although Plaintiff was assigned three new areas—Maryland and Northern Virginia and D.C., that represented only a net increase of 5 doors. Cargian Aff. ¶ 17.

194. Haley was assigned new territory in Western Florida, which added at least 6 new doors. Ex. 9, Def. Admissions ¶ 29.

195. Sales rep Brian Criddle ("Criddle"), whose region (northern California) is most similar to Plaintiff's in terms of volume (2010 sales \$12,928,861 compared to plaintiff's \$14,643,582) had his goals raised only 4.4M or 63% from \$13,250,000 to \$17,625,000. Id ¶¶ 40 – 42.

196. Rick Lambert's ("Lambert") 2010 goal was \$7,355,000 raised to \$12,800,000, or 74%. Id ¶¶ 48 & 50.

197. Although plaintiff did not reach the unrealistic sales goal in 2011, he in fact did increase sales over 2010. Cargian Aff. Ex. A.

198. After establishing unobtainable sales goals, defendant then focused primarily on plaintiff's failure to meet those goals. However, the measure of performance was year over year

performance. In other words, the extent to which the rep increased his/her sales over the prior year. Cargian Aff ¶ 7; Ex. 15-16.

199. Each month the sales reps were given statistics that showed how they did that month over the same month the prior year and at the end of the year they received a summary of their year over year performance. Id.

201. In 2013, although plaintiff's territory was decreased, his goals were increased by 14%. Cargian Aff. 34; Ex. 12, Sommer Tr. 85:7- 87:15.

202. No other sales rep, except Sommer, was increased more than 10%. Ex. 12, Sommer Tr. 85:7- 87:15; Ex. 9, Cargian Tr. 149:5-12.

E. DEMOTION AND REPLACEMENT BY INEXPERIENCED YOUNGER MAN

203. In December 2012 Prissert demoted plaintiff by removing significant portions of his territory and promoting Isaac Schafrath ("Schafrath") from Vault Manager to sales rep to take over a large portion of Plaintiff's territory. Because of the decrease in responsibility Plaintiff's salary was to be reduced by \$35,000. Cargian Aff ¶ 23.

205. Schafrath, who was born June 26, 1979, who was 33 years old at the time, was almost 20 years younger than plaintiff. Ex. 14, Schafrath Tr. 10:5-7.

206. At the time of promotion to sales rep, Schafrath had absolutely no prior sales experience. He was working as the Vault Manager, which entailed maintaining inventory, checking orders, maintaining repairs, crediting returns and other miscellaneous work to assure the safe keeping of the valuable products. Ex. 32.

207. Prior to his employment at Breitling, Schafrath's only experiences were short term jobs as a bartender and kitchen assistant; a carpenter's assistant, and a video production assistant for the Ohio State University Varsity football team. Ex. 31.

208. Schafrath fit into the boys club atmosphere of the work place. He had been a student athlete, with a lacrosse scholarship to Butler University, and a father, Dick Schafrath, who was a star football player at Ohio State, and an all pro-player for the Cleveland Browns. On at least 5 occasions that Schafrath can recall, Prissert engaged him in conversations about his father. Ex. 14, Schafrath Tr. 13:11-21; 17:21-18:10; 76:18-78:16.

209. Anderson, Prissert's sales manager with whom he consults, did not think the promotion a good idea. At the time he said, it would "take some time to get the kid up to speed" (emphasis added). Ex. 13, Anderson Tr. 23:5-17; 325:16-327:19.

F. DISCRIMINATORY DISCIPLINARY TREATMENT

210. Male sales rep "X" committed a serious breach of ethics and workplace policy by lying on his call reports and by misrepresenting to management that he was seeing clients when in fact he was taking personal time and claiming personal expenses for those trips as business expenses. Ex 25.

211. For several months "X" submitted reports which, for example, claimed that he was visiting customers in Las Vegas for which he would claim expenses, when in fact expense vouchers would show he was in California. This went on for at least several months. Ex. 26, Amstutz Tr. 118:2-11; 127:24-128:21; 130:19-131:13; Ex. 13, Anderson Tr. 102:7-103-3; Ex. 27 Prissert Tr. 61:19-62:15.

212. When questioned first he continued to lie to his bosses. Ex. 13, Anderson Tr. 110:13-111:10.

213. Before making any final decisions regarding the misbehavior, there was a full investigation including interviewing “X”. Ex. 26, Amstutz Tr: 218:12-219:11.

214. Amstutz testified that he recommended termination but Prissert wanted to interview “X” before making a decisions. Id Tr. 130:6-131:7; 132:2-3. No disciplinary action was taken against “X” except that he had to repay the money he improperly claimed were business expenses. Ex. 26, Amstutz Tr. 134:20-135:9.

215. X was given a “warning” signed by the HR Manager Diane Figueroa who was not involved in the investigation and has no responsibility for the sales force except for administrative processing of paperwork. Ex. 28, Figueroa Tr. 79:12-22; Ex. 26, Amstutz Tr. 135:10-14.

216. Contrast this treatment with the peremptory action taken against Plaintiff for a significantly less serious and unproven charge. Pl. Aff ¶¶ 31-32.

217. Prissert claims that on September 16, 2012, Plaintiff approached him and in front of guests and colleagues yelled at me and used the word “fuck” to me.” Prissert Aff. ¶ 46-47.

218. Two days later, on September 18, 2012 Prissert , not the HR manager, sent Cargian a stern Written Warning, both e-mail and hard copy, repeating the allegation that plaintiff yelled at him using the word “f...”. Ex. 21.

219. Cargian disputes the allegations and claims that he never cursed at the President, although he had been very upset by the President’s treatment. Cargian Aff. ¶ 31.

220. The record shows Prissert's allegations are questionable at best. This alleged event happened at a 78 lane noisy bowling alley. At the time that plaintiff allegedly used the offensive language, Prissert was tucked away in a corner of the 78 lane bowling alley, which was extremely noisy. It is highly unlikely that he heard anything since he was at least 15 feet away from Cargian, very possibly more. Cargian Aff. ¶ 31; Ex. 12, Sommer Tr. 60:12-61:21; 87:16-89:13; Pl. Aff.

221. Amstutz, who supported Prissert's claim, admitted that he did not hear anything and only knew about the allegation from Prissert. Ex. 26, Amstutz Tr. 214:6-218:4

222. Also, there are admissions that Prissert clearly embellished his story, which draws questions of credibility. When he originally wrote to Amstutz informing him of what he was claiming, Prissert never said that the alleged improper behavior happened in front of guests. What he said is that it was "almost in front of clients and staff" basically conceding it was not in front of them. Ex. 23, Breitling 1444.

223. Also, in the first statement of the event, he never claimed that plaintiff yelled "fuck" to him. He only claimed that he used the "f" word. Id. Use of the "f" word is definitely not uncommon at Breitling. Ex. 7, Roman Tr. 35:21-25; Email Breitling 1466.

224. Purposefully left blank.

225. Yet without any investigation, 2 days later Prissert sent a Warning letter, signed by the President himself, not the HR Manager. Ex. 21.

226. Contrast to "X" where Anderson had uncovered the necessary documents to prove that "X" was lying, and "X" continued to lie yet, there was still a full investigation and the

warning letter was not issued until after Prissert, Amstutz and Anderson met with X. Ex. 26, Amstutz Tr. 218:12-219:11.

227. Amstutz recommended termination but he said Prissert just wanted to speak with “X” before making a decision. Ex. 26, Amstutz Tr. 130:6-131:7; 132:2-3.

228. Also contrast the treatment of “X” to the reprimand Prissert personally sent to Cargian because he was giving cash Christmas gifts to his assistants, Pl. Aff. ¶ 29.

229. Plaintiff usually gave such cash gifts to his personal assistant and to the Inside Sales Manager, which Bodman was aware of and had criticized. Id.

230. Although Prissert says the reprimand was for violating company policy (Prissert Aff ¶, 45) there was no such policy. Ex. 28, Figueroa Tr. 52:24-53:8

231. Despite the fact that the behavior did not violate any rules, the President himself sent Cargian a reprimand claiming violation of policy, while a warning letter for what is essentially theft and lying comes from the HR manager, who has no authority over sales personnel except for ancillary paper work. Ex. 28, Figueroa Tr. 79:12-22.

G. TERMINATION

232. In 2013 “X” made only 70% of his goal. Ex. 5.

233. In 2013 “X” had a goal of opening 2 new doors. He did not open any new door. Ex. 36, Breitling 8952.

234. In 2013, Cargian made 76% of his goal. Ex. 5.

235. In 2013 In 2013 Cargian had a goal of opening 2 new stores. He met that goal.

Ex. 36, Breitling 8984.

236. Sales reps are given part of their bonus for “overall quality of work” (Qualitative bonus). See generally, Ex. 36.

237. In 2013 “X” received \$10,300 as his qualitative bonus, despite the fact that he opened no new stores, lied on his call reports, charges \$5,000 of personal expenses to the business, and did not make as many customer visits as Cargian. Ex. 36, Breitling 8984.

238. In 2013 Cargian’s qualitative bonus was only \$7,400. Id.

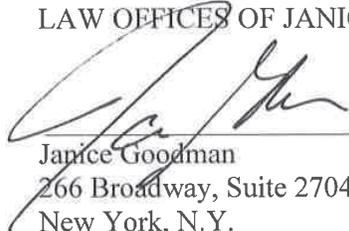
239. In 2013 “X” received a \$3,500 bonus for “reporting” despite the fact that he misrepresented on his call reports and expense reports. Ex. 36, Breitling 8952.

240. In 2013, “X” sales were down 19.84%. Ex. 16, Breitling 633.

241. In 2013 “X” sales were down 15.21%. Id.

Dated: March 28, 2016
New York, New York

LAW OFFICES OF JANICE GOODMAN



Janice Goodman
266 Broadway, Suite 2704
New York, N.Y.
(212) 869-1940
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICK M. CARGIAN,

Plaintiff,

against

BREITLING, USA, INC.,

Defendant.

15 CV 01084 (GBD)(HP)
Affirmation of Counsel for Plaintiff

JANICE GOODMAN, an attorney in good standing in the State of New York, affirms the following under penalty of perjury:

1. I am counsel to plaintiff, Frederick M. Cargian, in the above referenced matter and submit this affirmation in opposition to defendant's motion for summary judgment based on my personal knowledge relating to discovery and to place in the record certain documents and deposition transcripts material to this matter.
2. Plaintiff claims that when Thierry Prissert ("Prissert") became President of Breitling in 2011 he assigned to plaintiff unobtainable sales goals in a not too subtle attempt to set him up for failure. Relying totally on his uncorroborated declaration, Prissert alleges that it was his predecessor, Marie Bodman ("Bodman") who made the "ultimate decision" regarding the 2011 goals. Defendant's Rule 56.1 Statement ¶97, Prissert Decl. ¶ 22. Since the jury is not required to give credence to an uncorroborated statement of an interested party, *Reeves v Sanderson*, 530 U.S. 133, 151 (2000) the court should disregard this purported

evidence. It is particularly not trustworthy in the instant case, since defendant blocked plaintiff's attempt to depose Bodman. Magistrate Pitman ruled in defendant's favor and would not compel production of Bodman, Exh. 1. However, we were all there when he did warn defendant against trying to use Bodman's testimony affirmatively. Moreover, Plaintiff fully contradicts the claim, Exh. Cargian Dep. Tr. 208:7-8; 225:15-236:14; 222:25-223-16. Under the rules of summary judgment all inferences must be for the non-movant.

3. Plaintiff submits further that the data that defendant relies upon to "prove" plaintiff's failure to meet his sales goals is not admissible and highly questionable.
4. I conducted plaintiff's discovery and can attest to the fact that defendant never produced or otherwise identified the underlying data upon which its summary charts regarding goals are based. When asked, the witnesses who claimed to have knowledge either did not know or could not identify the underlying data or the data was no longer retrievable. An example, at the deposition of Charles Anderson, Sales Manager, he claimed that he uses something called "year end reports" to develop his power point presentations, some of which were entered by defendant as Exh. K. When requested at the deposition, counsel to defendant said that they will not produce the computer printouts. Exh. 13 Anderson Tr. 175:21-177:24. I made a formal letter request post deposition for all year end reports for 2009 through 2013. Defendant raised the usual boiler plate objections, plus a claim that the data no longer exists. Exh.2, ¶ 10 & 11.
5. In terms of goals, none of the sales reps, including plaintiff, had access to the goals of the other reps from 2011 on. See Cargian Aff. ¶ 8. In putting forth its evidence on this summary judgment defendant makes no attempt to authenticate the summary charts that it produces as relates to the sales goals.

- A. Almost all of the statistical information relating to goals, is based upon statements of Thierry Prissert (“Prissert”) or Chuck Anderson (“Anderson”) mainly relying upon the power point presentations that Anderson gave at sales meetings. Singer Decl. Exh. K. See for example: Def. 56, 1 Statement ¶¶ 98-99; 101-103; 108-109; 111-113.
- B. Defendant’s Exh. K is a much flawed set of documents. For some reason defendant renumbered the charts introduced in Exh K from those earlier produced which had been introduced at depositions. Breitling 9044 and 9065 were originally produced as Breitling 631 and 632, both attached herewith as Exh. 3. As testified by Amstutz, these were manually produced, not computer generated, as presumably were the other power point presentations. Ex. 26. Amstutz Tr. 37:9-14; 38:2-20; 192:1-19. The underlying documents used to create these charts were not produced, and to the best one could understand from his testimony, Anderson claimed they could not be reproduced because the information is no longer available. See: Exh 2 ¶ 10.
- C. Defendant did everything to obfuscate. It claims that Cargian’s 2011 goals were raised because he had an increase in territory. Plaintiff requests the number of doors for which each sales rep was responsible. Defendant objected as irrelevant. Exh. 2. Moreover, , plaintiff attempted to obtain the information regarding doors, through a request for admissions. Defendant denied the numbers proffered by plaintiff regarding Cargian and Haley, the two reps who had an increase in territory. Although defendant denies plaintiff’s proffers, it does not clarify as was its obligation under the rules and as it did regarding other information. Defendant just stonewalled ever producing the numbers. Exh 4 ,para 1 .

D. .Breitling produced yet two different summary documents that purportedly reflect the sales goals and achievements toward those goals for each sales rep from 2010 through 2014. Breitling 635 and Breitling 636 attached as Exh. 5. Anderson did not create these exhibits; and could not attest to their accuracy. Anderson concedes that the data in Breitling 636 could differ from the the data reflected in Breitling 635. Exh. Anderson Tr. 172:7-173:13.

E. Raising even greater credibility questions regarding the documents that purport to compare goals and attainment, Prissert, in answer to interrogatories, swore to the fact that Amstutz created Breitling 635. Not true. At his deposition Amstutz testified that he did not create the document, but that Diane Figueroa, Human Resource Manager, who reported to him, created it and he never checked the accuracy at the time. Exh. 26 , Amstutz Tr. Tr. 55:8-58:3. Amstutz testified that he later learned that there were errors in Breitling 635, but he could not identify them. Amstutz Tr. Defendant's counsel also conceded that there were errors in the chart, but would never identify the errors.

F. There were clear disparities in some of the number on the various charts. When the witnesses who were identified as persons with knowledge regarding the charts and data were asked about the contradictions in the numbers, they were incapable of doing so.Exh 26. Amstutz Tr: 34:13-21; 75:5-23.

6. Plaintiff submits that based on the lack of substantiation of any of the figures produced by defendant, particularly relating to goals, the only reliable documentation is the Chart with underlying documents produced by plaintiff,

Cargian Aff. Exh. A and Defendant's Responses to Plaintiff's Request for Admission,
attached her as **Exh. 4.**

The following Exhibits to be introduced by Plaintiff are affixed to this Affirmation.

6. Ex. 1. Order of Magistrate Judge Pitman
7. Ex. 2. Letter Singer to Goodman responding to discovery requests.
8. Ex. 3 Power Point pages. Breitling 631 & 632
9. Ex. 4. Defendants Responses to Plaintiff's Request for Admissions
10. Ex. 5. Defendants summary charts Breitling 635 & 636.
- Exh. 6. Intentionally omitted
- Ex. 7. Lisa Roman, former Dir. Of Marketing cited excerpts from deposition
- Ex. 8. Monica Vessely, Dir. Of Training, cited excerpts from deposition
- Ex. 9. Frederick Cargian, Plaintiff, cited excerpts from deposition
- Ex. 10. 2012 Power Point Presentation. Breitling 9062 & 9075
- Ex. 11. Intentionally omitted
- Ex. 12. Annie Sommer, Breitling, sales rep, cited excerpts from deposition
- Ex. 13. Charles Anderson, Sales Manager, cited excerpts from deposition
- Ex. 14. Isaac Schafrath, plaintiff's replacement, cited excerpts from deposition
- Ex. 15. Year over year sales comparison 2012/2011 Pl. 0000280
- Ex. 16. Year over year sales comparison 2013/2012 Breitling 633
- Ex. 17. Breitling collateral material—pin-ups used for marketing
- Ex. 18. Drawing in office of President of Breitling SA
- Ex. 19. Sophie Morice, Director of Retail, cited excerpts from deposition
- Ex. 20. Complaint of sex discrimination by sales rep Beth Haddad
- Ex. 21. Warning letter Prissert to Cargian Sept. 18, 2012

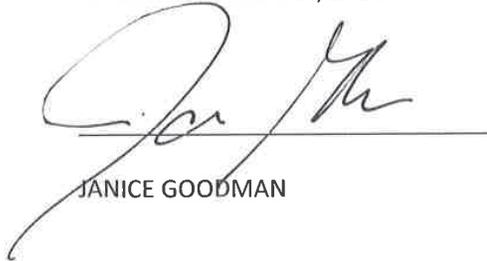
- Ex. 22. Summary of business related to Bentley 2012/2011 Breitling 9041
- Ex. 23. Prissert e-mail to Amstutz re: Reno incident Breitling 1444-45
- Ex. 24 Cargian's unused vacation time, 2012 PI. 0000180
- Exh. 25. Disciplinary material re: Sales Rep. X Breitling 7583-7588; 7591.
- Exh. 26. Sebastian Amstutz, V. P., cited excerpts from deposition.
- Exh. 27. Thierry Prissert, President, cited excerpts from the deposition
- Exh. 28. Diane Figueroa, Manager of HR, cited excerpts from deposition
- Exh. 29. Bonus Sheet 2013 for Cargian Breitling 8984
- Exh. 30. Order, 2/17/16 denying plaintiff's request for continuation of Amstutz deposition
- Exh. 31. Resume of Isaac Schafrath
- Exh. 32. Job Description Vault Manager
- Exh. 33. Breitling Points of Sale 2012. Breitling 9063
- Exh. 34. E-mails reducing reps goals for 2012 & 2013 Breitling 9087-9098
- Exh. 35 Bonus Statements 2012 for all sales reps Breitling 011; 8939-8944
- Exh. 36. Bonus Statements 2013 for all sales reps. Breitling 8984; 8951-57
- Exh. 37. Prissert to Roman re: her complaint 1/20/14

- Exh. 38. Intentionally left blank

Exh. 39. Singer to Goodman 2/3/16 resp. to discovery request

Exh. 40. Memos of criticism of Lambert work

AFFIRMED MARCH 28, 2016



A handwritten signature in black ink, appearing to read 'Janice Goodman', is written over a horizontal line. The signature is fluid and cursive.

JANICE GOODMAN

A-361

EXHIBIT 1

A-362

From: Case 1:15-cv-01084-GBD-HBP Document 47-1 Filed 03/29/16 Page 2 of 10
NYSD_ECF_Pub@nysd.uscourts.gov
Sent: Wednesday, July 29, 2015 9:38 AM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:15-cv-01084-GBD-HBP Carigan v. Breitling USA, Inc. Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 7/29/2015 at 9:37 AM EDT and filed on 7/28/2015

Case Name: Carigan v. Breitling USA, Inc.

Case Number: 1:15-cv-01084-GBD-HBP

Filer:

Document Number: 22

Docket Text:

ORDER: A conference having been held in this matter on July 27, 2015, during which several discovery issues were discussed, for the reasons stated on the record in open court, it is hereby **ORDERED** that: 1. Plaintiff's First Document Request 9 is denied without prejudice. Plaintiff or his counsel are directed to contact Ms. Bodman regarding her appearance for a deposition. I also direct defendant to ascertain Ms. Bodman's employment status, if any, with Breitling. A conference call will be held on Monday, August 3, 2015 at 2:00 p.m. to determine whether a further application will be necessary with respect to scheduling Ms. Bodman's deposition. 2. Defendant is to produce the portions of the personnel files of the comparators identified by plaintiff that include performance reviews, sales performance, disciplinary/misconduct reports, resumes to the extent that they reflect educational background and experience, compensation, self evaluations, and participation in marketing events. (As further set forth in this Order.) (Telephone Conference set for 8/3/2015 at 02:00 PM before Magistrate Judge Henry B. Pitman.) (Signed by Magistrate Judge Henry B. Pitman on 7/28/2015) Copies Sent By Chambers. (kko)

1:15-cv-01084-GBD-HBP Notice has been electronically mailed to:

Glenn Sklaire Grindlinger ggrindlinger@foxrothschild.com

Janice Goodman jg@janicegoodmanlaw.com

A-363

EXHIBIT 2



Fox Rothschild LLP
ATTORNEYS AT LAW

100 Park Avenue, Suite 1500
New York, NY 10017
Tel 212.878.7900 Fax 212.692.0940
www.foxrothschild.com

Zev Singer
Direct Dial: (212) 878-7928
Email Address: zsinger@foxrothschild.com

December 18, 2015

VIA EMAIL

Janice Goodman, Esq.
jg@janicegoodmanlaw.com

**Re: Cargian v. Breitling USA, Inc.
Civil Action No.: 15-cv-01084**

Ms. Goodman:

With regard to your supplemental document requests related to the deposition of Mr. Chuck Anderson, below please find defendant's responses.

REQUEST 1: Documents identifying the territories covered by Mr. Anderson in his duties as a sales representative in 2010.

RESPONSE 1: See document Bates stamped BREITLING_8797, enclosed herein

REQUEST 2: As to each territory covered by Mr. Anderson in 2010, produce all documents that identify the sales representative to whom the territory was assigned in 2011.

RESPONSE 2: See documents Bates stamped BREITLING_8800-8806, enclosed herein.

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware Florida Nevada New Jersey **New York** Pennsylvania

REQUEST 3: For the year 2010, documents reflecting sales in dollar amounts in Maryland which were credited to Mr. Anderson's production.

RESPONSE 3: See response to Request 1.

REQUEST 4: For the year 2010, documents reflecting sales in dollar amounts in Virginia which were credited to Mr. Anderson's production.

RESPONSE 4: See response to Request 1.

REQUEST 5: For the year 2010, documents reflecting sales in dollar amounts in No. Carolina which were credited to Mr. Anderson's production.

RESPONSE 5: See Response to Request 1.

REQUEST 6: For the year 2010, documents reflecting sales in dollar amounts in Western Fla. which were credited to Mr. Anderson's production in 2010.

RESPONSE 6: See response to Request 1.

REQUEST 7: For the year 2010, documents reflecting sales in dollar amounts in Delaware. which were credited to Mr. Anderson's production in 2010.

RESPONSE 7: See response to Request 1.

REQUEST 8: For the year 2010, documents reflecting sales in dollar amounts for any other business, not above requested, that was credited to Mr. Anderson's production.

RESPONSE 8: See response to Request 1.

REQUEST 9: Documents reflecting the number of doors for which each sales representative was responsible in each of the following years: 2009, 2010, 2011, 2012, 2013, 2014.

RESPONSE 9: With regard to Plaintiff's requests for the years 2009 and 2014, Defendant objects to this Request on the grounds that the Request seeks production of documents that are not relevant to plaintiff's claims and are not reasonably calculated to lead to the discovery of admissible evidence. For the remainder of the request, see documents Bates stamped BREITLING_8797-8813, enclosed herein, as well as documents previously provided Bates stamped BREITLING_1569-1602, BREITLING_1768-1770, and BREITLING_1801-1828.

REQUEST 10: Copies of the year end reports, as defined by Mr. Anderson, for each of the following years: 2009, 2010, 2011, 2012, 2013, 2014. If Defendant claims that all or any of these documents has already been produced please identify by Bates stamp number.

RESPONSE 10: Defendant objects to this Request on the grounds that the Request is incapable

of reasonable response. See Anderson deposition explaining that end of year reports cannot be re-created. Notwithstanding the aforementioned objection, and construing Plaintiff's request as a request for end of year sales data, Plaintiff is referred to documents produced herein Bates stamped BREITLING_8797-8813.

REQUEST 11: Copies of the year end reports for each year individually from 2009 through 2014 in the form reflected in Anderson Exh. 11 introduced at his deposition.

RESPONSE 11: Defendant objects to this Request on the grounds that the Request is incapable of reasonable response, misidentifies documents, and the Request seeks production of documents that are not relevant to plaintiff's claims and are not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST 12: All underlying documents relied upon to create Anderson Exh.2 introduced at his deposition.

RESPONSE 12: A search is being performed for said documents.

REQUEST 13: All underlying documents relied upon to create Anderson Exh. 13 introduced at his deposition.

RESPONSE 13: See documents Bates stamped BREITLING_8800-8806, enclosed herein

REQUEST 14: All underlying documents relied upon to create Anderson Exh. 14 introduced at his deposition.

RESPONSE 14: See documents Bates stamped BREITLING_8807-8813, enclosed herein

REQUEST 15: Documents reflecting the number of trainings performed by each sales rep for the years 2009 through 2014 separately.

RESPONSE 15: A search is performed for said documents, if any exist.

REQUEST 16 (marked in Plaintiff's requests as "14" again): Any documents that reflect requests for room assignments at the Basel sales meeting and jewelers show for any time since Mr. Cargian's employment.

RESPONSE 16: Defendant objects to this Request on the grounds that the Request is overbroad in both time and scope and on the grounds that the Request seeks production of documents that are not relevant to plaintiff's claims and are not reasonably calculated to lead to the discovery of admissible evidence

REQUEST 17: (marked in Plaintiff's requests as "15" again): Any texts messages sent or received by Mr. Anderson regarding or relating to Fred Cargian.

RESPONSE 17: None found.

Yours,

FOX ROTHSCHILD LLP

A handwritten signature in cursive script, appearing to read "Zev Singer".

Zev Singer

Attachments

EXHIBIT 3

Carla San 19

| Sell In 2012 | | BREITLING | | | | |
|--------------|--------------------------|----------------|--------------------|----------------|--------------------|--|
| | Total Sold in in Dollars | % 2012 vs 2011 | Units sold in 2012 | % 2012 vs 2011 | Ave. Price Sold In | |
| Rick | \$11,321,437 | +8.28% | 2,467 | -8.80% | \$4,589 | |
| Beth | \$11,846,238 | +7.51% | 2,588 | -13.70% | \$4,577 | |
| Josh | \$16,627,343 | +5.99% | 3,649 | -9.41% | \$4,557 | |
| Brian | \$14,637,893 | +4.71% | 2,936 | -12.30% | \$4,986 | |
| Patrick | \$10,004,033 | +0.55% | 2,076 | -23.01% | \$4,819 | |
| Annie | \$11,937,231 | -0.40% | 2,678 | -17.62% | \$4,458 | |
| Fred | \$12,899,581 | -6.79% | 2,987 | -16.49% | \$4,319 | |
| House | \$19,163,438 | +1.64% | 4,306 | -18.04% | \$4,449 | |
| Totals | \$108,437,194 | +2.53% | 23,686 | -14.97% | \$4,578 | |

Average Price 2011 \$3,879

INSTRUMENTS FOR PROFESSIONALS™

BREITLING

SELL IN 2011

| | Total Visits | Ave Visit Per Wk. | Wks. Rep | Total Sold in Dollars* | % vs. 2010* | Units sold in 2011* | % 2011 vs. 2010* | Ave. Price Sold In* |
|---------|--------------|-------------------|----------|------------------------|-------------|---------------------|------------------|---------------------|
| Fred | 182 | 5.87 | 31 | \$14,727,693 | +10% | 3,557 | -9% | \$3,875 |
| Annie | 231 | 5.63 | 41 | \$11,853,829 | +44% | 3,233 | +25% | \$3,667 |
| Josh | 291 | 6.47 | 46 | \$15,834,206 | +42% | 4,044 | +19% | \$3,915 |
| Rick | 132 | 6.29 | 21 | \$10,455,913 | +12% | 2,685 | 0% | \$3,894 |
| Patrick | 226 | 5.38 | 42 | \$9,949,222 | +35% | 2,651 | +17% | \$3,753 |
| Brian | 293 | 7.33 | 40 | \$14,230,513 | +34% | 3,205 | +9% | \$4,440 |
| Beth | 224 | 4.87 | 46 | \$10,798,534 | +44% | 3,028 | +28% | \$3,566 |
| Totals | 1,579 | 5.97 | | \$87,849,910 | +23.5% | 22,403 | +10% | \$3,879 |

* Excludes Tourneau

INSTRUMENTS FOR PROFESSIONALS™

CONFIDENTIAL

BREITLING_632

A-371

EXHIBIT 4

FOX ROTHSCHILD LLP
Glenn S. Grindlinger, Esq.
Zev Singer, Esq.
100 Park Avenue, Suite 1500
New York, NY 10017
Tel: (212) 878-7900
Fax: (212) 692-0940
Attorneys for Breitling USA, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICK M. CARGIAN,

Plaintiff,

-against-

BREITLING USA, INC.,

Defendant.

Civil Action No. 15-cv-01084
(GBD)(HP)

ECF Case

**BREITLING USA'S RESPONSES
AND OBJECTIONS TO
PLAINTIFF'S FIRST REQUEST
FOR ADMISSIONS**

Pursuant to Rule 36 Federal Rules of Civil Procedure ("Federal Rules") and the Local Rules of United States District Courts for the Southern and Eastern Districts of New York ("Local Rules"), Defendant Breitling USA, Inc. ("Defendant"), by and through its attorneys, Fox Rothschild LLP, hereby objects to and answers Plaintiff's First Request for Admissions ("Requests") as follows:

I.

RESERVATION OF RIGHTS

Any response to Plaintiff's Requests will be subject to Defendant's rights to object to the admission of any and all such responses on the grounds that they, or any of them, are irrelevant to the issues in this action or are otherwise inadmissible. Defendant responds to these Requests subject to the accompanying objections, without waiving and expressly preserving all such

objections. Defendant also submits these responses subject to, without intending to waive, and expressly preserving: (a) any objections as to privilege or work product and (b) the right to object to other discovery procedures involving and related to the subject matter of the Requests.

Defendant reserves the right to amend any of the information, documents, answers, and/or responses provided herein, in the event that information is discovered at a later date which renders any particular information, documents, answers, and/or responses to any Request inaccurate in any way.

Defendant's answers and responses to these Requests are governed by all applicable discovery rulings issued in this Action.

II.

GENERAL OBJECTIONS

1. Defendant objects to the instructions set forth in Plaintiff's Requests to the extent that they purport to impose upon Defendant obligations beyond those imposed by the Federal Rules, the Local Rules, or any Order entered in this Action. Defendant's objections to Plaintiff's Requests are prescribed by, and Defendant hereby responds in accordance with, the Federal Rules, the Local Rules, and any applicable Court Order.

2. Defendant objects to Plaintiff's Requests to the extent that they seek attorney-work product or trial preparation materials.

3. Defendant objects to Plaintiff's Requests to the extent they seek information, answers, and/or responses that are not reasonably calculated to lead to the discovery of admissible evidence and/or are otherwise irrelevant.

4. Defendant objects to Plaintiff's Requests to the extent they either fail to identify a specific time period for which information is requested. As such, the Requests are vague.

5. Defendant objects to Plaintiff's Requests to the extent that they are vague and employ imprecise specifications of the information sought. Defendant will only provide such information that reasonably can be identified as responsive to the particular Request.

6. Defendant objects to Plaintiff's Requests to the extent that they improperly assume facts not established in the case record.

7. Defendant reserves the right to provide additional relevant and unprivileged information that may come to its attention and/or become available in the future and to use such information at any hearing, trial, or proceeding related to this action.

8. Each and every response to a particular Request is made subject to the foregoing General Objections, regardless of whether a General Objection or Specific Objection is stated in the response. The explicit reference to a General Objection or the making of a Specific Objection in response to a particular Request is not intended to constitute a waiver of the General Objections that are not specifically referred to in that response.

9. In responding to these Requests, Defendant does not concede that any of the responses are relevant or admissible. To the contrary, Defendant retains the right to object on the grounds of competency, privilege, relevance, materiality, or otherwise, and to the use of these responses for any purpose, in whole or in part, in this action or in any other action.

III.

RESPONSES AND SPECIFIC OBJECTIONS

Specifically incorporating each of the foregoing General Objections into each and every response below, regardless of whether specifically referenced therein, and without waiving said objections and responses, Defendant responds to each specifically numbered Request follows:

Request 1. Please admit that the chart attached herewith as Exh. A accurately states the number of doors each Sales Representative serviced in 2010. If Defendant denies the accuracy of the data or does not qualify its denial pursuant to Rule 36(4) then please answer Requests to Admit Nos. 4-11.

RESPONSE 1:

Defendant objects to the Request on the grounds that it is vague with regard to time and it is beyond the scope of Federal Rule 36.

Notwithstanding said objection, the Request is admitted in part, denied in part. The chart in Exhibit A attached to the Requests accurately states the number of doors each Sales Representative serviced at year end 2010 except for Fred Cargian and Josh Haley.

Request 2. Please admit that the chart attached herewith as Exh.A accurately states the number of doors each Sales Representative serviced in 2011. If Defendant denies the accuracy of the data or does not qualify its denial pursuant to Rule 36(4) then please answer Requests to Admit Nos.4-11.

RESPONSE 2:

Defendant objects to the Request on the grounds that it is vague with regard to time and it is beyond the scope of Federal Rule 36.

Notwithstanding said objection, the Request is admitted in part. The chart in Exhibit A attached to the Requests accurately states the number of doors each Sales Representative serviced at year end 2011.

Request 3. Please admit that the chart attached herewith as Exh. A accurately states the number of doors each Sales Representative serviced in 2012. If Defendant denies the accuracy of the data

or does not qualify its denial pursuant to Rule 36(4) then please answer Requests to Admit Nos. 4-11.

RESPONSE 3:

Defendant objects to the Request on the grounds that it is vague with regard to time and it is beyond the scope of Federal Rule 36.

Notwithstanding said objection, the Request is denied. The chart in Exhibit A attached to the Requests does not accurately state the number of doors each Sales Representative serviced at year end 2012.

Request 4. Please admit that in 2010 Chuck Anderson serviced 17 doors.

RESPONSE 4:

See response to Request 1.

Request 5. Please admit that:

- A. In 2010 Fred Cargian serviced 36 doors
- B. In 2011 Fred Cargian serviced 40 doors
- C. In 2012 Fred Cargian serviced 42 doors

RESPONSE 5:

- A. See responses to Request 1.
- B. See responses to Request 2.
- C. See responses to Request 3.

Request 6. Please admit that:

- A. In 2010 Patrick Cawthorne serviced 37 doors
- B. In 2011 Patrick Cawthorne serviced 40 doors
- C. In 2012 Patrick Cawthorne serviced 40 doors

RESPONSE 6:

- A. See responses to Request 1.

- B. See responses to Request 2.
- C. See responses to Request 3.

Request 7. Please admit that:

- A. In 2010 Brian Criddle serviced 44 doors
- B. In 2011 Brian Criddle serviced 44 doors
- C. In 2012 Brian Criddle serviced 43 doors

RESPONSE 7:

- A. See responses to Request 1.
- B. See responses to Request 2.
- C. See responses to Request 3.

Request 8. Please admit that:

- A. In 2010 Beth Haddad serviced 44 doors
- B. In 2011 Beth Haddad serviced 40 doors
- C. In 2012 Brian Criddle serviced 42 doors

RESPONSE 8:

- A. See responses to Request 1.
- B. See responses to Request 2.
- C. See responses to Request 3.

Request 9. Please admit that:

- A. In 2010 Josh Haley serviced 48 doors
- B. In 2011 Josh Haley serviced 47 doors
- C. In 2012 Josh Haley serviced 49 doors

RESPONSE 9:

- A. See responses to Request 1.
- B. See responses to Request 2.
- C. See responses to Request 3.

Request 10: Please admit that:

- A. In 2010 Rick Lambert serviced 35 doors
- B. In 2011 Rick Lambert serviced 41 doors
- C. In 2012 Rick Lambert serviced 40 doors

RESPONSE 10:

- A. See responses to Request 1.
- B. See responses to Request 2.
- C. See responses to Request 3.

Request 11. Please admit that:

- A. In 2010 Annie Sommer serviced 42 doors
- B. In 2011 Annie Sommer serviced 47 doors
- C. In 2012 Annie Sommer serviced 44 doors

RESPONSE 11:

- A. See responses to Request 1.
- B. See responses to Request 2.
- C. See responses to Request 3.

Request 12. Please admit that in 2010 Chuck Anderson's sales territory included Western Florida, Maryland, and Virginia.

RESPONSE 12:

Admitted in part and denied in part. In 2010 Chuck Anderson's sales territory included Western Florida, Maryland, and Northern Virginia.

Request 13. Please admit that in 2009 Delaware was assigned to Fred Cargian.

RESPONSE 13:

Admitted.

Request 14. Please admit that in 2009 Kentucky was assigned to Rick Lambert.

RESPONSE 14:

Admitted.

Request 15. Please admit that in 2009 North Carolina, South Carolina, and Tennessee, previously serviced by Chuck Anderson, was assigned to Josh Haley

RESPONSE 15:

Admitted.

Request 16. Please admit that in about mid-2011 Southern Virginia was assigned to Patrick Cawthorne.

RESPONSE 16:

Denied.

Request 17. Please admit that in 2011 Maryland and Virginia were assigned to Frederick Cargian

RESPONSE 17:

Admitted.

Request 18. Please admit that in 2011 Southern New Jersey, previously serviced by Fred Cargian, was assigned to Annie Sommer.

RESPONSE 18:

Admitted.

Request 19. Please admit that in 2011 Tennessee was assigned to Rick Lambert.

RESPONSE 19:

Admitted.

Request 20. Please admit that in 2012 So. Virginia was assigned to Rick Lambert.

RESPONSE 20:

Admitted.

Request 21. Please admit that Defendant has not produced to Plaintiff copies of the 2013 employment contracts for:

- A. Patrick Cawthorne
- B. Brian Criddle
- C. Beth Haddad
- D. Josh Haley
- E. Rick Lambert
- F. F. Annie Sommer

RESPONSE 21:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 22. Please admit that Defendant has not produced to Plaintiff copies of the completed Performance Review forms for 2013 for the following Sales Representatives:

- A. Patrick Cawthorne
- B. Brian Criddle
- C. Beth Haddad
- D. Josh Haley
- E. Rick Lambert
- F. Annie Sommer

RESPONSE 22:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 23. Please admit that Defendant has not produced to Plaintiff copies of the completed Performance Review forms for 2012 for the following Sales Representatives:

- A. Patrick Cawthorne
- B. Brian Criddle
- C. Beth Haddad
- D. Josh Haley
- E. Rick Lambert
- F. Annie Sommer

RESPONSE 23:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 24. Please admit that Defendant has not produced to Plaintiff copies of the completed Performance Review forms for 2011 for the following Sales Representatives:

- A. Patrick Cawthorne
- B. Brian Criddle
- C. Beth Haddad
- D. Josh Haley
- E. Rick Lambert
- F. Annie Sommer

RESPONSE 24:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 25. Please admit that Defendant has not produced to Plaintiff copies of the completed Performance Review forms for 2010 for the following Sales Representatives:

- A. Patrick Cawthorne
- B. Brian Criddle
- C. Beth Haddad
- D. Josh Haley
- E. Rick Lambert
- F. Annie Sommer

RESPONSE 25:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 26: Please admit that Defendant does not have documents reflecting the number of trainings performed by each Sales Representative for the years 2009 through 2013.

RESPONSE 26:

Denied.

Request 27: Please admit that Defendant has not produced to Plaintiff all of the documents reflecting the number of trainings performed by each Sales Representative for the years 2009 through 2013.

RESPONSE 27:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 28: Please admit that Defendant does not have any document(s) supporting its claim that Plaintiff requested to share a room with Sales Representative Annie Sommer at any sales meeting held in Basel.

RESPONSE 28:

Defendants object to the Request on the grounds that it assumes facts not established in the record and calls for legal conclusions. Notwithstanding the objections, the Request is denied.

Request 29: Please admit that in 2011 the following Florida accounts were transferred from Chuck Anderson to Josh Haley:

- A. Congress Sanibel
- B. Little Switzerland Key West
- C. Provident Ft. Myers

- D. Little Switzerland Westin
- E. Provident Naples
- F. Yamron Jewelers

RESPONSE 28:

Admitted.

Request 30: Please admit that Defendant does not have the underlying documents relied upon to create the chart affixed herewith as Exhibit B.

RESPONSE 30:

Denied.

Request 31: Please admit that Defendant has not produced to Plaintiff the underlying documents relied upon to create the chart affixed herewith as Exhibit B.

RESPONSE 31:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 32. Defendant has not produced to Plaintiff records reflecting the actual bonuses received by any Sales Representative, except Fred Cargian, for the years:

- A. 2010
- B. 2011
- C. 2012
- D. 2013

RESPONSE 32:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36.

Request 33. Please admit that the chart affixed herewith as Exh. C accurately reflects the base salary for the Sales Representatives in:

- A. 2011
- B. 2012
- C. 2013

RESPONSE 33:

Defendant objects to this Request on the ground that it is beyond the scope of Federal Rule 36. Notwithstanding the objection, the Request is admitted with regard to the base salary numbers contained in the chart created by Plaintiff attached to the Requests as Exhibit C.

Request 34. Please admit that in 2010 Fred Cargian's Sales Goal was \$13,000,000.

RESPONSE 34:

Admitted.

Request 35. Please admit that in 2010 Fred Cargian's sales were \$14, 643,582,000.

RESPONSE 35:

Admitted.

Request 36. Please admit that in 2011 Fred Cargian's Sales Goal was raised to \$24,995,000.

RESPONSE 36:

Admitted in part and denied in part. Cargian's 2011 goal at the beginning of the year was \$24,995,000 and was later reduced to \$23,760,000.

Request 37. Please admit that in 2010 Patrick Cawthorne Sales Goal was \$7,540,000.

RESPONSE 37:

Admitted.

Request 38. Please admit that in 2010 Patrick Cawthorne's sales were \$7,683,735.

RESPONSE 38:

Admitted.

Request 39. Please admit that in 2011 Patrick Cawthorne's Sales Goal was raised to 10,545,000.

RESPONSE 39:

Admitted.

Request 40. Please admit that in 2010 Brian Criddle's Sales Goal was \$13,250,000.

RESPONSE 40:

Admitted.

Request 41. Please admit that in 2010 Brian Criddle's sales were \$12,928,861.

RESPONSE 41:

Admitted.

Request 42. Please admit that in 2011 Brian Criddle's Sales Goal was raised to \$17,625,000.

RESPONSE 42:

Admitted.

Request 43. Please admit that in 2010 Beth Haddad's Sales Goal was \$9,290,000.

RESPONSE 43:

Admitted.

Request 44. Please admit that in 2010 Beth Haddad's sales were \$9,792,314.

RESPONSE 44:

Admitted.

Request 45. Please admit that in 2011 Beth Haddad's Sales Goal was raised to \$13,175,000.

RESPONSE 45:

Admitted.

Request 46. Please admit that in 2010 Josh Haley's Sales Goal was \$10,660,000.

RESPONSE 46:

Admitted.

Request 47. Please admit that in 2010 Josh Haley's sales were \$12,550,437.

RESPONSE 47:

Admitted.

Request 48. Please admit that in 2011 Josh Haley's Sales Goal was raised to \$17,470,000.

RESPONSE 48:

Admitted.

Request 49. Please admit that in 2010 Rick Lambert's sales goal was \$7,355,000.

RESPONSE 49:

Admitted.

Request 50. Please admit that in 2010 Rick Lambert's Sales were \$9,323,723.

RESPONSE 50:

Admitted.

Request 51. Please admit that in 2011 Rick Lambert's Sales Goal was raised to \$12,800,000.

RESPONSE 51:

Admitted in part and denied in part. Lambert's 2011 goal at the beginning of the year was \$12,800,000 and was later raised mid-year to 14,445,000.

Request 52. Please admit that in 2010 Annie Sommer's sales goal was \$7,680,000.

RESPONSE 52:

Admitted.

Request 53. Please admit that in 2010 Annie Sommer's Sales were \$7,682,010.

RESPONSE 53:

Denied.

Request 54. Please admit that in 2011 Annie Sommer's Sales Goal was raised to \$13,590,000.

RESPONSE 54:

Admitted.

Dated: New York, New York
January 27, 2016

FOX ROTHSCHILD LLP



By: _____

Glenn S. Grindlinger

Zev Singer

100 Park Avenue, Suite 1500

New York, New York 10017

(212) 878-7900

Attorneys for Breitling, USA, Inc.

DOORS SERVICED

| | 2010 | 2011 | 2012 |
|--------------|------|------|------|
| C. Anderson | 17 | | |
| F. Cargian | 36 | 40 | 42 |
| P. Cawthorne | 37 | 40 | 40 |
| B. Criddle | 44 | 44 | 43 |
| B. Haddad | 44 | 40 | 42 |
| J. Haley | 48 | 47 | 49 |
| R. Lambert | 35 | 41 | 40 |
| A. Sommer | 42 | 47 | 44 |

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2009

| | YTD Sales 2009 | Goals 2009 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Chuck | ATL \$ 4,472,250 | \$ 3,430,000 | 130% |
| Josh | SE \$ 9,335,981 | \$ 13,145,000 | 71% |
| Rick | SCEN \$ 6,117,948 | \$ 8,815,000 | 69% |
| Annie | NE2 \$ 6,595,729 | \$ 9,425,000 | 69% |
| Beth | W2 \$ 7,248,883 | \$ 11,365,000 | 64% |
| Brian | W1 \$ 11,295,602 | \$ 16,815,000 | 67% |
| Patrick | NCEN \$ 6,147,330 | \$ 9,295,000 | 66% |
| Fred | NET \$ 10,650,105 | \$ 16,220,000 | 65% |
| Reps totals | \$ 62,055,829 | \$ 88,230,000 | 70% |

2010

| | YTD Sales 2010 | Goals 2010 | % achieved |
|--------------------|----------------------|----------------------|-------------|
| Chuck | ATL \$ 8,517,337 | \$ 4,450,000 | 191% |
| Patrick | NCEN \$ 9,323,723 | \$ 7,540,000 | 124% |
| Annie | NE2 \$ 9,186,359 | \$ 7,680,000 | 120% |
| Josh | SE \$ 12,550,437 | \$ 10,650,000 | 118% |
| Fred | NET \$ 14,643,882 | \$ 13,000,000 | 113% |
| Beth | W2 \$ 9,792,314 | \$ 8,290,000 | 105% |
| Rick | SCEN \$ 7,683,735 | \$ 7,355,000 | 104% |
| Brian | W1 \$ 12,928,861 | \$ 13,250,000 | 98% |
| Reps totals | \$ 84,636,548 | \$ 73,225,000 | 115% |

2011

| | YTD Sales 2011 | Goals 2011 | % achieved |
|--------------------|-----------------------|-----------------------|------------|
| Patrick | NCEN \$ 10,856,124 | \$ 10,545,000 | 103% |
| Josh | SE \$ 17,983,916 | \$ 17,470,000 | 103% |
| Beth | W2 \$ 13,475,981 | \$ 13,175,000 | 102% |
| Annie | NE2 \$ 13,735,613 | \$ 13,590,000 | 101% |
| Brian | W1 \$ 16,686,573 | \$ 17,525,000 | 95% |
| Rick | SCEN \$ 11,234,592 | \$ 13,445,000 | 84% |
| Fred | NET \$ 18,767,811 | \$ 23,750,000 | 79% |
| Reps totals | \$ 102,712,600 | \$ 105,610,000 | 94% |

2012

| | YTD Sales 2012 | Goals 2012 | % achieved |
|--------------------|-----------------------|----------------------|------------|
| Rick | SCEN \$ 11,321,437 | \$ 11,300,000 | 100% |
| Josh | SE \$ 16,527,343 | \$ 16,800,000 | 99% |
| Brian | W1 \$ 14,537,893 | \$ 15,200,000 | 96% |
| Beth | W2 \$ 11,846,238 | \$ 12,400,000 | 96% |
| Patrick | NCEN \$ 10,004,033 | \$ 10,700,000 | 93% |
| Annie | NE2 \$ 11,937,211 | \$ 13,200,000 | 90% |
| Fred | NET \$ 12,890,304 | \$ 17,400,000 | 74% |
| Reps totals | \$ 100,273,760 | \$ 92,000,000 | 94% |

2013

| | YTD Sales 2013 | Goals 2013 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Rick | SCEN \$ 11,202,685 | \$ 11,210,000 | 100% |
| Patrick | NCEN \$ 9,930,484 | \$ 10,450,000 | 95% |
| Annie | NE2 \$ 7,672,937 | \$ 8,750,000 | 88% |
| Isaac | ATL \$ 6,773,464 | \$ 8,090,000 | 84% |
| Beth | W2 \$ 9,805,681 | \$ 11,515,000 | 85% |
| Fred | NET \$ 8,452,072 | \$ 10,640,000 | 79% |
| Josh | SE \$ 13,501,553 | \$ 17,415,000 | 78% |
| Brian | W1 \$ 11,176,011 | \$ 14,810,000 | 75% |
| Reps totals | \$ 78,817,901 | \$ 93,280,000 | 84% |

2014

| | YTD Sales 2014 | Goals 2014 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Brian | W1 \$ 12,017,274 | \$ 12,500,000 | 96% |
| Patrick | NCEN \$ 9,897,401 | \$ 10,700,000 | 92% |
| Josh | SE \$ 13,652,574 | \$ 15,100,000 | 90% |
| Annie | NE2 \$ 9,780,754 | \$ 11,300,000 | 86% |
| Rick | SCEN \$ 9,989,473 | \$ 11,800,000 | 85% |
| Isaac | ATL \$ 10,743,358 | \$ 12,700,000 | 84% |
| Beth | W2 \$ 8,150,265 | \$ 11,000,000 | 74% |
| Reps totals | \$ 66,934,747 | \$ 85,100,000 | 87% |

CONFIDENTIAL



BASE SALARY

| | 2011 | 2012 | 2013 |
|-------------------|-----------|-----------|-----------|
| Fred Cargian | \$230,000 | \$230,000 | \$196,000 |
| Patrick Cawthorne | \$195,000 | \$205,000 | \$211,000 |
| Brian Criddle | \$210,000 | \$215,000 | \$222,000 |
| Beth Haddad | \$185,000 | \$190,000 | \$196,000 |
| Josh Haley | \$175,000 | \$190,000 | \$196,000 |
| Rick Lambert | \$152,000 | \$170,000 | \$170,000 |
| Annie Sommer | \$185,000 | \$190,000 | \$165,000 |

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EXHIBIT 5

2009

| | YTD Sales 2009 | Goals 2009 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Chuck ATL | \$ 4,472,250 | \$ 3,430,000 | 130% |
| Josh SE | \$ 9,336,981 | \$ 13,145,000 | 71% |
| Rick SCEN | \$ 8,117,948 | \$ 8,815,000 | 92% |
| Annie NE2 | \$ 6,506,729 | \$ 9,425,000 | 69% |
| Beth W2 | \$ 7,748,883 | \$ 11,385,000 | 68% |
| Brian W1 | \$ 11,295,602 | \$ 16,815,000 | 68% |
| Patrick NCEN | \$ 6,447,330 | \$ 9,285,000 | 69% |
| Fred NE1 | \$ 10,450,106 | \$ 16,220,000 | 64% |
| Reps totals | \$ 62,085,829 | \$ 88,230,000 | 70% |

2010

| | YTD Sales 2010 | Goals 2010 | % achieved |
|--------------------|----------------------|----------------------|-------------|
| Chuck ATL | \$ 8,517,337 | \$ 4,450,000 | 191% |
| Patrick NCEN | \$ 9,323,723 | \$ 7,540,000 | 124% |
| Annie NE2 | \$ 9,196,359 | \$ 7,680,000 | 120% |
| Josh SE | \$ 12,550,437 | \$ 10,680,000 | 118% |
| Fred NE1 | \$ 74,643,582 | \$ 13,000,000 | 113% |
| Beth W2 | \$ 9,792,314 | \$ 9,290,000 | 105% |
| Rick SCEN | \$ 7,683,735 | \$ 7,355,000 | 104% |
| Brian W1 | \$ 12,828,861 | \$ 13,250,000 | 98% |
| Reps totals | \$ 84,635,348 | \$ 73,225,000 | 116% |

2011

| | YTD Sales 2011 | Goals 2011 | % achieved |
|--------------------|-----------------------|-----------------------|------------|
| Patrick NCEN | \$ 10,856,124 | \$ 10,545,000 | 103% |
| Josh SE | \$ 17,953,916 | \$ 17,470,000 | 103% |
| Beth W2 | \$ 13,475,981 | \$ 13,175,000 | 102% |
| Annie NE2 | \$ 13,735,613 | \$ 13,590,000 | 101% |
| Brian W1 | \$ 16,868,573 | \$ 17,625,000 | 95% |
| Rick SCEN | \$ 11,234,592 | \$ 13,445,000 | 84% |
| Fred NE1 | \$ 18,787,811 | \$ 23,760,000 | 79% |
| Reps totals | \$ 102,712,800 | \$ 109,610,000 | 94% |

2012

| | YTD Sales 2012 | Goals 2012 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Rick SCEN | \$ 11,321,437 | \$ 11,200,000 | 100% |
| Josh SE | \$ 16,627,343 | \$ 16,800,000 | 99% |
| Brian W1 | \$ 14,537,893 | \$ 15,200,000 | 96% |
| Beth W2 | \$ 11,846,238 | \$ 12,400,000 | 96% |
| Patrick NCEN | \$ 10,004,033 | \$ 10,700,000 | 93% |
| Annie NE2 | \$ 11,017,231 | \$ 11,700,000 | 100% |
| Fred NE1 | \$ 12,899,501 | \$ 13,400,000 | 94% |
| Reps totals | \$ 89,273,766 | \$ 95,000,000 | 94% |

2013

| | YTD Sales 2013 | Goals 2013 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Rick SCEN | \$ 11,202,888 | \$ 11,210,000 | 100% |
| Patrick NCEN | \$ 9,930,484 | \$ 10,450,000 | 95% |
| Annie NE2 | \$ 7,672,837 | \$ 8,780,000 | 88% |
| Isaac ATL | \$ 6,775,464 | \$ 8,080,000 | 84% |
| Beth W2 | \$ 9,806,681 | \$ 11,915,000 | 82% |
| Fred NE1 | \$ 8,452,072 | \$ 10,640,000 | 79% |
| Josh SE | \$ 13,801,593 | \$ 17,415,000 | 79% |
| Brian W1 | \$ 11,176,011 | \$ 14,810,000 | 75% |
| Reps totals | \$ 78,817,901 | \$ 93,290,000 | 84% |

2014

| | YTD Sales 2014 | Goals 2014 | % achieved |
|--------------------|----------------------|----------------------|------------|
| Brian W1 | \$ 12,017,274 | \$ 12,500,000 | 96% |
| Patrick NCEN | \$ 9,887,401 | \$ 10,700,000 | 92% |
| Josh SE | \$ 13,552,574 | \$ 15,100,000 | 90% |
| Annie NE2 | \$ 8,760,764 | \$ 11,300,000 | 86% |
| Rick SCEN | \$ 9,999,473 | \$ 11,800,000 | 85% |
| Isaac ATL | \$ 10,743,385 | \$ 12,700,000 | 85% |
| Beth W2 | \$ 8,150,285 | \$ 11,000,000 | 74% |
| Reps totals | \$ 74,211,447 | \$ 85,100,000 | 87% |

CONFIDENTIAL



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EXHIBIT 6

EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
FREDERICK M. CARGIAN,
Plaintiff, CASE NO: 15-CV-0184
v.
BREITLING USA,
Defendant.
-----X

NOTICE OF DEPOSITION:

LISA ROMAN

DATED: June 17, 2015

TIME: 10:00 a.m.

HELD AT:

Lucas Bagnell Varga
2425 Post Road
Suite 200
Southport, Connecticut

Confidential Portions pgs. 46-74
- - -

Reporter: Mercedes L. Marney, RPR. LSR #530

BRANDON HUSEBY REPORTING & VIDEO
(800) 852-4589
249 Pearl Street
Hartford, Connecticut 06103

1 Q When were you first hired by
2 Breitling?

3 A It was February 2002.

4 Q And did there come a time that you
5 were terminated by Breitling USA?

6 A Yes.

7 Q And when was that?

8 A January 5th, 2015.

9 Q And when you were hired, what was
10 your job title?

11 A Marketing director.

12 Q And as a marketing director, what
13 were your job duties?

14 A When I first started or when I
15 finished?

16 Q Okay. When you first started. I'm
17 glad you clarified.

18 A My duties included overseeing all of
19 the advertising for the US. It also included, at
20 the time, any kind of events, public relations
21 which was started then, all of the training
22 initiatives, whether it was doing the training,
23 putting the training together, all of the
24 communications, whether it was to Switzerland or
25 to all of our accounts.

1 Q When you say "being older," were you
2 older than the other staff --

3 A No, older than he was. In other
4 words, I felt that he was treating me a little
5 condescending, whereas, I was older and I -- just
6 by the nature of that, I thought maybe have a
7 little bit more respect for -- or until you --
8 you know.

9 Q Did you ever believe that any of
10 your -- the treatment was discriminatory because
11 of your gender?

12 A Well, yeah. He didn't call the guys
13 "dear."

14 Q Anything else?

15 A There was a -- I would say that
16 when -- sometimes we would be at different
17 places, it was definitely more that the guys
18 stuck together, and they would have these betting
19 games and do things, and the females would feel
20 kind of on the outskirts.

21 And the fact that, you know, I didn't
22 follow the PGA or was not a golfer, I felt that
23 that was something that was -- didn't help being
24 included in things.

25 Q Besides -- when you say the betting

1 A The sales reps.

2 Q Did you see Mr. Cargian also there in
3 these betting things?

4 A We were all in the same area. In
5 other words, it was done in front of -- in other
6 words, if we were traveling or if we were like in
7 Reno and stuff and we're all in the -- you know,
8 the conversation was going on, we were all there.
9 But, you know, some of us were not directly
10 involved.

11 Q Was Mr. Cargian directly involved?

12 A No.

13 Q Are you aware of any other women who
14 may have -- withdraw that.

15 When you made -- expressed your
16 concern, not just at this one meeting, but at any
17 time you expressed concern to Ms. Figueroa about
18 your treatment, did you indicate to her that you
19 felt -- that the women were not treated as well
20 as the men?

21 A I think my more take on it was that,
22 you know, it's becoming a boys -- it's becoming a
23 boys club a little bit.

24 Q And did you express that to her?

25 A Uh-huh.

1 Q You have to say yes or no.

2 A Oh, yes.

3 Q Thank you.

4 And did you observe any of the other
5 women who were treated in a similarly
6 non-respectful way as you felt you were being
7 treated?

8 A Yeah. I mean, the same pattern of
9 behavior like within the office was kind of the
10 same thing. Whether I was called out or somebody
11 else was called in, you know, in that same way.
12 You know, the reference of "dear," you know, that
13 same type of the way he addressed it and treated
14 people, you know, while he was in the office was
15 consistent with other females.

16 Q And this was just the way he treated
17 females, you're not talking about the way he
18 treated the men?

19 A He might sit in his room and yell for
20 somebody else, but he didn't call them "dear."

21 Q Did you ever hear Mr. Prissert use
22 street language, vulgar language?

23 A Yeah, I mean, it's prevalent. I
24 mean, the F word got thrown around a little bit.
25 But --

1 Diana or Sebastian.

2 Q She talked to somebody about -- she
3 complained about the discrimination because it
4 was a boys club?

5 A I'm not specific about that, but on
6 how she was communicated with.

7 Q And do you recall any specifics that
8 she told you about --

9 A I don't know if it was an e-mail -- I
10 don't know what it was. But she just said that
11 she had made a comment to either -- I don't know
12 if it was Diana or Sebastian that, you know, this
13 is not how she wanted to be communicated with.

14 Q Was any action taken after these
15 comments were made to Ms. Figueroa about the way
16 Mr. Prissert was treating some of the women?

17 A I can't speak for Susan's situation.
18 You know, when I spoke to her, she basically
19 said, well, you know, you can write -- when I got
20 my first letter, she goes, feel free to write and
21 put it back in your file, which I did. And then
22 I was kind of -- I don't know what the word was,
23 but kind of like, "I can't believe that you wrote
24 a letter" kind of a thing.

25 Q What was --

1 A Yes. After I wrote a rebuttal,
2 because I felt that if this was put in my
3 permanent file, and I didn't necessarily believe
4 with everything that was done, I felt -- and she
5 encouraged me. She said, write something that
6 you would put in your file as well. And I did.
7 And that's when I got, like, a "I can't believe
8 that you wrote something." And I stand by
9 everything I said in the first one.

10 Q That's what Mr. Prissert said to you?

11 A Correct.

12 MS. GOODMAN: Are we at 4?

13 THE REPORTER: We are at 5.

14 MR. LUCAS: I'm going to ask that
15 this be designated confidential and any
16 questioning on this document be deemed
17 confidential.

18 MS. GOODMAN: I'm just thinking --
19 can I ask a question before you do that,
20 Scott?

21 MR. LUCAS: Just the fact that you're
22 marking it --

23 MS. GOODMAN: I have no problem with
24 documents being marked as confidential --

25 MR. LUCAS: Well, I just want --

1 A Yes.

2 Q Is this a letter that you were
3 talking about when you said, he basically --
4 something to the effect of, he basically told me
5 that I have no right to make -- to answer his
6 initial complaint to me.

7 A Right. Basically he said he can do
8 whatever he wants. You have no say as to how --
9 I mean, it's clear.

10 Q What does he say?

11 A Paragraph 3: Please understand that
12 you have no say as to how, when, or why warnings
13 are delivered.

14 This is like reliving a nightmare.

15 Q I'm sorry. Would you like a break?

16 A No, I'm fine. I'm just saying.

17 Q Any time you want a break, just let
18 me know.

19 A I'm fine.

20 MS. GOODMAN: Plaintiff's 10.

21 (Plaintiff's Exhibit Number 10 was
22 marked for identification, as of this
23 date.)

24 BY MS. GOODMAN:

25 Q I'm showing you what's been marked as

1 Haddad, Rick Lambert, Marian Bello [phonetic].

2 And Robert Grazziano [phonetic]. I think he was
3 doing the southeast.

4 Q Those are people that were already
5 there?

6 A And Bob Dumar, when I first started.

7 Q And this is 2002?

8 A Yes.

9 Q Do you recall, you know, getting
10 introduced to the staff or learning about the
11 salespeople that you would have to work with in
12 promoting the Breitling product, do you recall
13 whether hearing anything about Mr. Cargian's
14 reputation at that point?

15 A Define reputation.

16 Q Well, what people said about him.

17 A He was a good sales rep, I mean, you
18 know. Where he covered, what he did, he'd been
19 there the longest, things like what.

20 Q Tell me as much as you recall
21 learning about Mr. Cargian when you came on.

22 A That he had been there the longest as
23 far as all the reps, and actually was one of the
24 first three or four people that started at
25 Breitling under Marie.

1 That he covered most of -- the
2 demographics of his territory. That he was fun,
3 good personality. That was it. I mean, you
4 know, when I first came in it was kind of hard.
5 I met everybody at the same time.

6 Q And over those next eight, nine
7 years, while Ms. Bodman was the president, did
8 you have many opportunities to work with
9 Mr. Cargian as part of your job?

10 A Yes.

11 Q How did you find him as a sales rep
12 to work with?

13 A Easy going, very, you know, very
14 responsible and responsive to my questions or,
15 you know, for his accounts if I needed
16 information or if we were doing anything, you
17 know, helpful.

18 Q In what way was he helpful?

19 A Well, I mean, usually the reps would
20 be the first line of defense with the accounts
21 and so, you know, they would bring back the
22 information. So the challenge is always the
23 level of communication, of getting the
24 information, getting it back, planning things.
25 And Fred was very good as kind of relaying the

1 information back and forth.

2 Q Was he better than some of the
3 others?

4 A I would say, yes.

5 Q Which ones was he better than, in
6 working with you?

7 A That's kind of -- I mean, just from
8 the -- the more objective information,
9 dissemination of information, he was probably
10 better than Rick Lambert because of getting back
11 with information on a timely basis, he was easier
12 to deal with than Marian Bello, who sometimes it
13 was hard to get information out of.

14 You know, for me, it was all about
15 getting the information for me to be able to do
16 my job. So within that group there were varying
17 levels. I would say Fred was at the better end
18 and others were at the not so great end.

19 Q What happened to Marian Bello, did
20 she leave the company or was she fired?

21 A She was, to my knowledge, terminated.

22 Q And do you know why?

23 A I don't know the specifics of what
24 was --

25 Q Do you know the rumor of what was

1 days, we would have three dinners, then either
2 someone in my department might go around and say,
3 okay, do you want to come on this night or this
4 night? It really depended.

5 Q Did Ms. Bodman or Mr. Prissert
6 participate in that decision?

7 A Oh, in the decision? I don't
8 remember, to be honest. We didn't do it in the
9 last couple of years. I mean, it's been --
10 because the training was then taken out as a
11 separate department in -- I can't remember. It
12 must have been 2012 or '13. I can't remember.
13 So that was not under me.

14 Q Now, as I understand it, the sales
15 reps would go to these -- many of these events
16 that you had for your clients, and Mr. Cargian
17 attended many of those?

18 A Yes.

19 Q And did you observe his performance
20 while at those -- well, what were the purposes of
21 those events?

22 A Okay. Again, there was under the
23 umbrella of training events, and sometimes we
24 would do larger -- there were levels of training
25 and sometimes we would do them off site which we

1 would consider a level three training or we would
2 go to a site or New York or somewhere and bring
3 in people and set up and do a training.

4 So that was that type of event. And
5 Fred always was very good about interacting with
6 his accounts and making sure that they all felt
7 good and comfortable and welcomed, you know,
8 taken care of, had lunch, and was very attentive
9 to their needs.

10 We did other larger events, like we
11 did the Reno air races which was like our largest
12 US event. And each of the reps invited, again,
13 their customers to participate. And Fred was
14 always very good again about making sure his
15 people got there, there were certain activities
16 that they could do, and he'd make sure they would
17 all get as much activities and kind of exposure
18 that they could.

19 And then we had the other big event
20 that I mentioned that was in Switzerland. And
21 that was -- those invites were cleared through
22 the president, whoever it was at that time, you
23 know, the reps would say who they would like to
24 invite, they would put in names, and then
25 ultimately Thierry or Marie would make the final

1 decision of who would be able to go or who would
2 get the invite or who wouldn't be able to go.
3 All that kind of fun stuff.

4 And then there would be -- there's a
5 lot of different types of events and things that
6 we would do.

7 Q You mentioned the Reno air race. How
8 about the Las Vegas watch fair?

9 A Oh, the Las Vegas show, yes. I'm
10 sorry.

11 That was more -- I think of that as
12 more of a trade show, whereas, we're there and
13 the accounts kind of come. But you know, it's
14 not like our event. We're all part of a big
15 show.

16 Q Was Fred at that event?

17 A Yes.

18 Q That's an annual event, correct?

19 A Yes.

20 Q Did you notice -- your observation of
21 him at that event, was that the same as the
22 others, where he was very interactive?

23 A Absolutely.

24 Q Now, the large events in Switzerland,
25 you were talking about, where that's by

1 and left.

2 Q When you say, quote, we did the
3 aeronautics, what does that mean?

4 A That's the day that we -- they set up
5 and we could fly in the planes and drive the
6 cars. Then they did the tour of the Bentley
7 factory. Then the next -- after that night, we
8 took a train to London, and had a dinner that
9 night, and then we flew home the next day.

10 Q Were you involved in the reps that
11 were selected?

12 A No.

13 Q Who made the decision about the reps
14 who got invited?

15 A It would have been Thierry and I
16 think Chuck may have had input.

17 Q Did you -- these events were for
18 certain clients, not all clients were invited,
19 correct?

20 A That's true.

21 And then also, I, as marketing, would
22 also supplement with journalists if it was deemed
23 that it would be acceptable and beneficial for
24 Breitling.

25 Q What was the criteria with which

1 enthusiast?

2 A Yes.

3 Q And how did you know about that?

4 A Because we would attend a lot of
5 the -- some of the Bentley events, the New York
6 auto show, Pebble Beach, and Fred was always very
7 interested in all the cars.

8 Q Was it general knowledge, he made it
9 known?

10 A I think so. I mean, yeah.

11 Q Do you recall observing Mr. Cargian's
12 working relationship with Ms. Bodman?

13 A Uh-huh.

14 Q And can you describe it? You said
15 that you saw them interacting?

16 A Yeah. It was very cordal, very
17 friendly. I mean, they had a history. You know,
18 it was mutual respect, they definitely, you know,
19 felt comfortable enough to say anything they
20 wanted to each other. It was a very cordial but
21 very open kind of relationship and I think they
22 respected each other.

23 Q Was Mr. -- to your knowledge, was
24 Mr. Cargian one of the top salespeople from 2002
25 to about 2010?

1 A To the best of my knowledge.

2 Q And what's the basis of that
3 knowledge?

4 A I mean, we would see the sales, you
5 know, by the territories. I can't always
6 categorize, but he had the biggest accounts in
7 New York and always had good numbers.

8 Q How did his numbers compare with his
9 colleagues, the other sales reps, to the extent
10 that you observed it?

11 A I think he was always a little bit
12 ahead. You know, depending upon how the market
13 went from year to year, if the west was doing as
14 well. You know, but he always had strong
15 numbers.

16 Q When Mr. Prissert came on, did you
17 note any change in management's attitude towards
18 Mr. Cargian?

19 A Yes.

20 Q Tell me everything that you noticed.

21 A Well, I mean, it -- it was a new
22 relationship. Nobody knew Thierry before he came
23 to work for Breitling, so I think there was like,
24 you know, getting a new teacher or a new boss in
25 anything. There was time that needed to go so

1 they could get to know each other.

2 Q Did you observe Mr. Prissert treating
3 Mr. Cargian different than his treatment of the
4 other men?

5 A In the context of what I've said
6 before, as far as the -- you know, the betting
7 and the golf, you know, that kind of vernacular,
8 I would say yes.

9 Again, a lot of --

10 Q Let me just ask you, when you say
11 yes, do you mean that he did not include
12 Mr. Cargian in all of that type of little betting
13 things or things that went on in his office?

14 A In my observation, Fred was not a
15 part of that.

16 Q Any other things that you noted that
17 Mr. Prissert did that Mr. Cargian was not a part
18 of?

19 A Again, you know, I'm in a pretty
20 insulated view in my office so there's only so
21 much that happened.

22 Q Just understand, I'm not asking you
23 for anything that you did observe although I
24 might ask you after that about what you've heard
25 from other people. This is just what did you

1 A I mean, there was a general feedback
2 that they weren't getting along kind of thing.

3 Q Who did you get this general feedback
4 from?

5 A I can't remember. It's just office
6 kind of -- again, I wasn't part of -- you know,
7 the way the office is is that I had my office and
8 then all the scuttlebutt's out here, so sometimes
9 I could overhear things but I was not generally
10 part of all that, so I didn't get a lot of the
11 gossip, so to speak.

12 Q Was there any other way that you saw
13 Mr. Prissert treated Mr. Cargian differently than
14 the other male employees?

15 A I mean, it's all under that same kind
16 of -- just kind of like guy stuff. Under that
17 same kind of feeling.

18 Q So it was all under the same kind of
19 feeling --

20 A Like the boys club thing, you know.
21 It was all talking about sports or golf.

22 Q Are you aware of the fact that
23 Mr. Cargian is a golfer?

24 A Yes, I have played with Fred.

25 Q He says he's not that good.

1 Better than you?

2 A Probably.

3 Q Was it known by Mr. Prissert and
4 others that he was a golfer?

5 A I don't know. I don't know if
6 Thierry knew I was a golfer, I was never asked.

7 Q Do you know if any women who were
8 invited on golfing outings with Mr. Prissert?

9 A Not to my knowledge. I know that --
10 I don't know if Annie had ever -- she's the only
11 other one I know that plays golf. And I'm not
12 sure outside of the office like if she was
13 included, I don't know.

14 Q Was it well known -- well, you were
15 aware of the fact, were you not, that Mr. Cargian
16 is gay?

17 A Yes.

18 Q Was it well known at Breitling that
19 he was gay?

20 A I think eventually I said, you know,
21 when I first started, you know I didn't
22 necessarily find out right away, but it was
23 something that became aware and I think everybody
24 was aware of the same thing.

25 Q Did you ever hear anyone make

1 derogatory comments about gay people?

2 A No.

3 Q Did Mr. Prissert ever make any
4 comments about Mr. Cargian's sexual orientation?

5 A Not to me.

6 Q Did you ever hear him make any
7 comments?

8 A No, not in my direct -- no.

9 Q When you say "not in your direct" --

10 A In other words, he didn't say it to
11 Fred in front of me.

12 Q Did you have -- did anybody ever tell
13 you that he made derogatory comments?

14 A No.

15 MS. GOODMAN: If I could just get a
16 couple minutes to talk with my client and
17 look over my notes, I might be done.

18 (Off the record.)

19 BY MS. GOODMAN:

20 Q Do you recall whether Mr. Cargian
21 ever shared with you his concern that he was not
22 being invited to some of the networking golf
23 outings that were being arranged by Mr. Prissert?

24 A I do recall. I don't know if it was
25 firsthand or secondhand, that concern.

A-417

EXHIBIT 8

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X
FREDERICK M. CARGIAN,

Plaintiff,

-against-

BREITLING USA, INC.,

Defendant.

Civil Action No. 15-cv-01084

-----X

100 Park Avenue
New York, New York

January 19, 2016
12:17 p.m.

DEPOSITION of MELISSA VESSELY, taken
before Alexis Perez Jenio, a Shorthand Reporter
and Notary Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 111527B

1

VESSELY

13:47:08 2 Q So Mr. Cargian didn't really
13:47:10 3 participate in, quote, Mach-1, he participated
13:47:12 4 in Take-Off?

13:47:13 5 A Correct.

13:47:15 6 Q And --

13:47:15 7 A To my knowledge, depending on when
13:47:19 8 it -- it was the end of 2013 going into 2014.

13:47:23 9 Q Now, is this still -- are you still
13:47:26 10 talking about this online thing?

13:47:27 11 A This is something different.

13:47:28 12 Q This is something different. Okay.
13:47:29 13 Tell me what Take-Off?

13:47:30 14 A So Take-Off is the introductory
13:47:32 15 training.

13:47:32 16 Q Okay. But I mean, how does that
13:47:33 17 happen?

13:47:33 18 A So that, when I started Take-Off in
13:47:35 19 2013, we actually invited stores outside of
13:47:40 20 their locations to classrooms.

13:47:43 21 Q Okay.

13:47:44 22 A But essentially, it was to be for a
13:47:51 23 training at the point of sale.

13:47:54 24 Q Now, how many of these Take-Offs did
13:47:57 25 you do with Mr. Cargian?

1

VESSELY

13:47:59 2 A I don't recall.

13:47:59 3 Q More than one?

13:48:00 4 A More than one.

13:48:01 5 Q And were they in the New York City area

13:48:03 6 or in one of his other parts of his territory?

13:48:08 7 A I don't recall exactly where they were

13:48:11 8 at, but he participated with me.

13:48:14 9 Q Who leads them when it's the two of

13:48:17 10 you? Do you lead them or would the account

13:48:20 11 executive lead them or --

13:48:20 12 A I led them and they assisted.

13:48:23 13 Q And how was Mr. Cargian's assistance to

13:48:25 14 you? Was he cooperative with you?

13:48:28 15 A In the trainings, he was cooperative

13:48:31 16 with me.

13:48:31 17 Q And did he do a good job?

13:48:34 18 A I mean, he participated, he assisted

13:48:37 19 me. I was also new, so he was helpful in giving

13:48:42 20 information on previous Breitling information

13:48:44 21 that I would not have had the experience of

13:48:50 22 having, and so he was supportive of me doing the

13:48:53 23 trainings while we were in the classroom.

13:48:55 24 Q Were there any of the account

13:48:59 25 executives who were not what you considered to

1

VESSELY

13:52:43 2 Q And for the end purpose would be so you
13:52:46 3 could develop training or just to give you
13:52:50 4 general background?

13:52:50 5 A For me to get general background, for
13:52:54 6 me to be able to do my job, to understand what
13:52:59 7 content is great that we're using, what content
13:53:03 8 maybe we need to change.

13:53:04 9 Q Did you go out on similar one-week
13:53:09 10 sojourns with any of the other account
13:53:13 11 executives?

13:53:14 12 A I went with Annie Sommer and Brian
13:53:16 13 Criddle.

13:53:16 14 Q And was Ms. Sommer equally cooperative
13:53:20 15 with you?

13:53:21 16 A Yes.

13:53:21 17 Q And how about Mr. Criddle, was he
13:53:24 18 cooperative?

13:53:25 19 A Yes.

13:53:35 20 Q When you went to the stores with
13:53:37 21 Mr. Cargian, to the accounts, what was his --
13:53:41 22 the reception to him? I mean, did people
13:53:44 23 receive him well? Did he seem to be liked?

13:53:47 24 A Yeah, he seemed to be liked.

13:54:06 25 MS. GOODMAN: Just give me some

1 VESSELY

14:10:35 2 feedback on them.

14:10:36 3 Q Was that true of Mr. Cargian as well as
14:10:39 4 all the others?

14:10:39 5 A I had great feedback on all of the
14:10:39 6 account executives.

14:10:39 7 Q And how about --

14:10:43 8 A From all the markets.

14:10:44 9 Q And how about Ms. Haddad, how would you
14:10:48 10 evaluate her performance as a trainer?

14:10:51 11 A Training for her, as well, she was more
14:10:52 12 with me in the training in the support rather
14:10:55 13 than conducting it or leading it.

14:10:57 14 Q And how would you evaluate Mr. Cargian
14:11:00 15 as a trainer?

14:11:01 16 A For him, in training he's very
14:11:04 17 knowledge, and the team responded well to him.

14:11:13 18 Q Now, you've given me these evaluations
14:11:17 19 because I've asked you specifically --

14:11:19 20 A Um-hmm.

14:11:19 21 Q -- did you regularly give Mr. --

14:11:24 22 MS. GOODMAN: I take back that
14:11:25 23 question.

14:11:26 24 Q Did you ever give Mr. Prissert your
14:11:28 25 evaluation of the training skills of the various

1

VESSELY

14:11:32 2 account executives?

14:11:32 3 A I always shared with Mr. Prissert that
14:11:35 4 the account executives were well loved by their
14:11:41 5 stores.

14:11:42 6 Q And that was all of them, and you
14:11:43 7 shared all of them?

14:11:44 8 A All of them, it's without a doubt, in
14:11:50 9 the stores they say Breitling is one of the best
14:11:53 10 companies for the people.

14:12:13 11 Q What working relationship did you have
14:12:16 12 with Ms. Haddad?

14:12:17 13 A I would say a friendly one.

14:12:19 14 Q Did she ever talk with you about her
14:12:24 15 concern that there was this sports atmosphere?

14:12:28 16 MR. SINGER: Objection to the form
14:12:30 17 and facts not established. You can
14:12:33 18 answer.

14:12:33 19 A She had talked to me about her
14:12:37 20 relationship with Thierry, that she did not feel
14:12:39 21 that it was a good relationship.

14:12:40 22 Q And what did she say was the problem?

14:12:43 23 A She didn't feel that he liked her.

14:12:49 24 Q Did you -- why did she -- did she give
14:12:55 25 you any reason of why she felt he didn't like

1

VESSELY

14:12:59 2 her?

14:13:00 3 A I let people speak if they wanted to
14:13:02 4 speak. I did not go into whatever they don't
14:13:06 5 share with me.

14:13:06 6 Q Did you tell Mr. Prissert about her
14:13:08 7 comments?

14:13:09 8 A She came to me in confidence about her
14:13:12 9 relationship and was asked on how she should
14:13:20 10 proceed.

14:13:20 11 Q And what did you say?

14:13:21 12 A What I tell everybody: If you are
14:13:25 13 unhappy and you do not like how you are being
14:13:29 14 treated and you feel that there is something
14:13:31 15 that is wrong, you need to speak to the source.

14:13:34 16 Q And the source would be Mr. Prissert?

14:13:37 17 A Yes.

14:13:37 18 Q And Mr. Prissert is the president of
14:13:38 19 the company?

14:13:39 20 A Yes.

14:13:39 21 Q Did she express any concern that, I
14:13:42 22 don't want to get fired?

14:13:43 23 A I think that there was a couple that
14:13:46 24 had shared that they were worried that they
14:13:49 25 would be fired.

1

VESSELY

14:43:54 2

MR. SINGER: Objection to the form.

14:43:55 3

Do people believe.

14:43:56 4

You can answer if you know what

14:43:58 5

people believe. Go ahead.

14:43:59 6

A Well, I was going to say I don't.

14:44:04 7

Q The company. The company.

14:44:04 8

A In the company, I've never --

14:44:05 9

MR. SINGER: Objection to the form.

14:44:06 10

You can answer.

14:44:07 11

A I've never talked about the artwork

14:44:10 12

with anyone.

14:44:10 13

Q Well, how do you see this half-naked,

14:44:15 14

you know, poses of seductive women as relating

14:44:19 15

to the Breitling product?

14:44:21 16

MR. SINGER: Objection to the form.

14:44:24 17

You can answer.

14:44:25 18

A As far as for me, are mostly our

14:44:28 19

clientele that we have buy our watches are men,

14:44:31 20

so definitely is more of a product that we cater

14:44:34 21

to men. For me, the images, I don't have an

14:44:37 22

opinion about them.

14:44:38 23

Q Okay.

14:44:39 24

A I joined the company with this.

14:44:41 25

Q And you would agree with me that these

1

VESSELY

14:44:48 2 female pilot images would not appeal to, would

14:44:53 3 not turn a gay man on?

14:44:55 4 MR. SINGER: Objection to the form.

14:44:56 5 You can answer.

14:44:57 6 A I can't answer that question. I don't

14:44:57 7 know.

14:45:01 8 Q For the main part, this image would be

14:45:04 9 more attractive to a heterosexual man, correct?

14:45:10 10 MR. SINGER: Objection to the form.

14:45:11 11 You can answer.

14:45:11 12 A I can't answer for that either.

14:45:13 13 Q So you really think that this might

14:45:16 14 be -- that gay men would be as attracted to, to

14:45:19 15 find these half-naked women as attractive

14:45:22 16 straight men?

14:45:23 17 MR. SINGER: Objection. Don't

14:45:24 18 answer that. It's argumentative.

14:45:26 19 Don't answer it.

14:45:27 20 A In --

14:45:28 21 MR. SINGER: Don't answer. Don't

14:45:30 22 answer.

14:45:30 23 THE WITNESS: Okay.

14:45:31 24 MS. GOODMAN: On what basis?

14:45:34 25 MR. SINGER: It's argumentative.

1

VESSELY

14:45:36 2

MS. GOODMAN: That's not an

14:45:37 3

objection. That's not even a -- that's

14:45:38 4

not a privilege --

14:45:38 5

MR. SINGER: It's argumentative --

14:45:39 6

MS. GOODMAN: It's not an objection

14:45:39 7

to instruct somebody not to answer.

14:45:39 8

MR. SINGER: No, it's an improper

14:45:41 9

question.

14:45:42 10

MS. GOODMAN: It's not.

14:45:43 11

Well, then, that's a whole

14:45:45 12

different subject. You know, you can

14:45:46 13

say --

14:45:46 14

MR. SINGER: All right. Go ahead.

14:45:47 15

Go ahead. You can answer. Over

14:45:49 16

objection, you can answer.

14:45:50 17

A What I was going to say is I can't

14:45:52 18

answer what someone perceives as attractive or

14:45:55 19

not attractive; that's for each person to

14:45:58 20

decide.

14:45:59 21

What I can say is that for these, these

14:46:02 22

conjure up -- I work in companies -- it conjures

14:46:05 23

up images to product, and, you know, it's an era

14:46:09 24

of the 50s pilot that had pinup girls that they

14:46:13 25

put on their planes. We're an aviation company.

1

VESSELY

14:46:13 2 Q I see.

14:46:17 3 A So in my opinion, individuals who are
14:46:19 4 attracted to men, regardless of what their
14:46:22 5 orientation is, they're not going to be
14:46:24 6 attracted to that photo if they're attracted to
14:46:28 7 men.

14:46:28 8 Q Have you ever been to the Swiss office
14:46:32 9 of Breitling?

14:46:32 10 A I have.

14:46:33 11 Q Have you ever been to Mr. Schneider's
14:46:36 12 office?

14:46:37 13 A I have not.

14:46:37 14 Q How come?

14:46:39 15 A I've never been --

14:46:41 16 MR. SINGER: Objection --

14:46:41 17 A -- invited.

14:46:43 18 MR. SINGER: Objection to the form.
14:46:45 19 You can answer.

14:46:46 20 Q Did you ever ask to be -- were others
14:46:47 21 invited?

14:46:47 22 A I don't know.

14:46:48 23 Q Were you aware of the artwork that he
14:46:51 24 had in his office?

14:46:52 25 A No.

1 Q And did anybody follow up? I mean,
2 since you were in the marketing, did you talk to
3 anybody about it?

4 A Well, those were not always -- in
5 other words, we had our regular things.

6 Some of these things were done like
7 kind of outside the marketing or whatever. Like,
8 he would take the golf tournaments and he would
9 invite whoever he wanted, and we would just make
10 sure that they got there.

11 Q "He" being Thierry Prissert?

12 A Right. In other words, when they
13 were certain -- if you're specifically talking
14 about the Ernie Els types of events --

15 Q Right.

16 A -- he furnished that guest list. And
17 then someone in my department, who would handle
18 the events, would handle the logistics.

19 Q And did you get a list, though, of
20 the people who got invited to those?

21 A Eventually, yeah.

22 Q Do you recall whether Fred Cargian
23 was invited to any of them?

24 A I don't recall seeing his name.

25 Q Do you recall at all Mr. Cargian

A-430

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FREDERICK M. CARGIAN,

Plaintiff,

-against-

BREITLING USA,

Defendant.

Civil Action No. 15-cv-01084

-----X

100 Park Avenue
New York, New York

September 17, 2015
10:10 a.m.

DEPOSITION of FREDERICK CARGIAN,
taken before Alexis Perez Jenio, a Shorthand
Reporter and Notary Public of the State of New
York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 110752

1 CARGIAN

2 from 1995, '96, when you became a sales rep,
3 until she left in 2011?

4 A With Thierry Prissert, starting in
5 2011.

6 Q Well, let me --

7 A Okay.

8 Q -- let me -- from 1995, '96, when you
9 became solely a sales rep, until December 31,
10 2010, did you report directly to Ms. Bodman?

11 A Yes.

12 Q Starting on January 1, 2011 --

13 A Yes.

14 Q -- you were reporting to Ms. Bodman and
15 Ms. Prissert at that time -- Mr. Prissert?

16 A Mr. Prissert, yes.

17 Q My apologies. Mr. Prissert.

18 A Yes.

19 Q And when did you stop reporting to
20 Ms. Bodman?

21 A April -- well, I don't...

22 April 2011.

23 Q And starting in, sometime in
24 April 2011, until your employment ended, who did
25 you report directly to?

1 CARGIAN

2 Q Did that change at any point in time
3 while you were a sales rep at Breitling?

4 A There was slight changes, procedures
5 that would change year to year that were
6 implemented that you would follow, but the bulk
7 of it was the same.

8 Q And the bulk of it was the same until
9 your employment with Breitling terminated in
10 December of 2013?

11 A Yes.

12 Q When you started as -- solely as a
13 sales rep, what was your territory?

14 A It was Maine down to Virginia.

15 Q Just because that can -- depending on
16 how you divide things, that can be a little
17 confusing, so we'll just go by what I believe is
18 state by state in that region.

19 So you covered all of Maine?

20 A Yes.

21 Q All of New Hampshire?

22 A Yes.

23 Q All of Vermont?

24 A Yes.

25 Q All of Massachusetts?

1 CARGIAN

2 A Yes.

3 Q All of Rhode Island?

4 A Yes.

5 Q All of Connecticut?

6 A Yes.

7 Q All of New York?

8 A Yes.

9 Q Including up by Buffalo?

10 A All of New York.

11 Q Okay. All of New Jersey?

12 A Yes.

13 Q All of Pennsylvania?

14 A Yes.

15 Q Including out by Pittsburgh and Erie?

16 A Yes, all of Pennsylvania.

17 Q All of Maryland?

18 A Yes.

19 Q West Virginia?

20 A You forgot Delaware, but Delaware.

21 Then Maryland, yes. And then -- no, just

22 Virginia, not West Virginia.

23 Q Okay, I was going to get to Delaware.

24 A Okay.

25 Q Delaware. All of Delaware?

1 CARGIAN

2 A Yes.

3 Q The District of Columbia?

4 A Yes.

5 Q And all of Virginia?

6 A All of Virginia.

7 Q And that was your territory from 1995
8 through '96ish?

9 A Um-hmm. Yes.

10 Q Until when?

11 A I don't know exactly. Until...
12 until... '99, as far as I can recollect.

13 Q What happened in '99?

14 A Ms. Sommer was promoted to a sales rep.

15 Q And when Ms. Sommer was promoted to
16 sales rep, was part of your territory given to
17 Ms. Sommer?

18 A Yes.

19 Q And that was done by Ms. Bodman?

20 A Ah... yes... Yes, yes.

21 Q And what part of your territory was
22 given to Ms. Sommer?

23 A New England.

24 Q And by "New England," you mean Maine,
25 New Hampshire, Vermont, Massachusetts,

1 CARGIAN

2 Connecticut, and Rhode Island?

3 A Correct.

4 MS. GOODMAN: Say that again.

5 Maine, New Hampshire...

6 (The last question was read back by
7 the court reporter.)

8 A And depending on what year, we also
9 split some of New Jersey.

10 Q How was New Jersey split? Was it done
11 geographically or was it done store by store?

12 A Somewhat geographically. It changed
13 often.

14 Q And was it geographically, like north
15 Jersey, south Jersey?

16 A Correct, yes.

17 Q And you --

18 A And I took south.

19 Q So she was given north Jersey?

20 A Yes.

21 Q Any other territories taken from you to
22 give to Ms. Sommer in 1999?

23 A No.

24 Q So from 1999 until -- starting sometime
25 in 1999, you had New York, south Jersey,

1 CARGIAN

2 Pennsylvania, Maryland, Delaware, D.C., and
3 Virginia?

4 A Yeah, I don't know if it was exactly
5 '99 or if it was 2000, but yes.

6 Q Approximately 1999?

7 A Yes.

8 Q And approximately how long did you have
9 that territory?

10 A I had that territory till -- from what
11 I can recollect, 2007, maybe.

12 Q What happened in 2007?

13 A Or 2008. No, 2007.

14 Oh, Marie hired Chuck Anderson.

15 Q Okay. And what happened with respect
16 to your territory as a result of Ms. Bodman
17 hiring Mr. Anderson?

18 A Yes, he took Delaware south and picked
19 up some of Josh Haley's accounts in the southern
20 East Coast.

21 Q So Mr. Anderson was given Delaware?

22 A Um-hmm. Yes.

23 Q Maryland?

24 A Yes.

25 Q D.C.?

1 CARGIAN

2 A Yes.

3 Q And Virginia?

4 A And other states that were not mine,
5 yes.

6 Q And so you were left, at that point, in
7 approximately 2007, with Pennsylvania, south
8 Jersey, and New York?

9 (Pause)

10 A I'm trying to...

11 As far as I can recollect, yes.

12 Q And, again, at that point you still had
13 all of New York and all of Pennsylvania?

14 A Correct.

15 Q And the decision to give your --
16 your -- southern territory, Delaware on south,
17 was made by Ms. Bodman?

18 A Yes, because the company was growing.

19 Q And how long did you have New York,
20 Pennsylvania, and south Jersey? From 2007ish
21 till when?

22 A Until --

23 MS. GOODMAN: Objection to form. I
24 believe he said 2007, 2008.

25 MR. GRINDLINGER: That's why I

1 CARGIAN

2 personalities into account.

3 Q Did you ever share a room with Annie
4 Sommer?

5 A Yes.

6 Q How many times?

7 A Twice.

8 MS. GOODMAN: Objection. We're
9 still focused on the sales meeting?
10 Can you...

11 MR. GRINDLINGER: Yes.

12 Q Only twice?

13 A As far as I can recollect, yes.

14 Q Who else did you share rooms with?

15 A Rick Lambert...

16 And I think one year Robert Graziano.
17 That was a long time ago.

18 And that's it.

19 Q You usually shared with Rick Lambert?

20 A Yes.

21 Q When did you share with Annie?

22 A 2013. And I don't recollect the other
23 year that we did, but it was in the years 2000s
24 somewhere.

25 Q Do you recall if it was before 2011?

1 CARGIAN

2 A From what I can recollect, yes.

3 (Pause)

4 No, I misspoke. It wasn't 2013 Annie
5 and I were together; it was 2011 we were
6 together. I'm sorry.

7 Q So in 2012 and 2013, you shared with
8 Mr. Lambert?

9 A Yes.

10 Q And you shared with Annie another time,
11 sometime before 2011?

12 A Yes.

13 Q Who is Robert Grazi...

14 A Graziano.

15 Q Graziano?

16 A Yes.

17 Q Is he a former sales rep?

18 A Yes, Florida area.

19 Q Is he currently a sales rep?

20 A Not with Breitling, no.

21 Q Do you recall when he left Breitling?

22 A More than five years ago. I don't
23 know.

24 Q Now, other than the Breitling sales
25 meeting in conjunction with the International

1 CARGIAN

2 Q What occurrence in Reno?

3 A It was at a Reno air races function.

4 Q What happened?

5 A Oh. Um, we, ah... we had -- it was a
6 three-day trip with our clients. Our clients
7 were in Reno, Nevada, downtown, and we were at a
8 restaurant. There was probably 60 to 80 people
9 there, and dinner was winding down, and Katie
10 Adams, who's the head of promotions, said that
11 we have to get everybody to the -- we were going
12 bowling. It's the Bowling Hall of Fame there,
13 so it's quite impressive, the bowling alley.

14 So Annie and I looked around. We
15 seemed to be the only two people there from
16 Breitling, other than our accounts. We had the
17 people follow us. We didn't exactly know how to
18 go, but we did finally make it there. It wasn't
19 supper far, but we weren't exactly sure where it
20 was from the restaurant.

21 And you go up two sets of escalators --
22 it's a mammoth place -- and we got to the top of
23 the stairs with all these people in tow. They
24 all went to one end to get shoes, and I looked
25 back in a corner -- you cannot see anyone from

1 CARGIAN

2 unless you actually go around the corner -- and
3 there's Mr. Prissert, Mr. Lambert, Mr. Anderson,
4 and Ms. Haddad, bowling. And I said, What the
5 fuck is going on? Because Annie and I were
6 running the company party, and it wasn't our
7 responsibility, and they're over there playing,
8 they're bowling, and I was like, I don't get it.
9 And I was like, Why does that responsibility
10 always -- well, not always, but it does a lot,
11 but why did it fall on us? That's not our job.
12 But we were good enough bring everybody.
13 Everybody is here safely; everybody started
14 playing and enjoying themselves; and they're
15 over there fooling around and not helping work
16 at all, you know?

17 Any event is work, whether it's social
18 or not, so...

19 Q And so you were --

20 A He reprimanded me with a letter from
21 that.

22 Q Any other incidents or negative
23 feedback that Mr. Prissert provided to you?

24 A No.

25 Q And did anyone else provide negative

1 CARGIAN

2 said during that sales meeting?

3 A I talked a lot during the meeting. We
4 all did.

5 Q Do you recall saying that you were only
6 going to work till 5 o'clock?

7 A Yes. I actually changed it to
8 6 o'clock, but, yes, I do remember saying that.

9 Q In front of all the other sales reps?

10 A Yes, because I had just been given my
11 budget, and mine was 4 percent more than
12 everybody else's sitting at the table --

13 Q That's not what I asked.

14 MS. GOODMAN: Well, that's not
15 what --

16 Q I asked the question if you recall -- I
17 asked the question if you recall --

18 MS. GOODMAN: Please don't cut him
19 off. I want him to finish his answer.
20 You asked a question -- you ask
21 open-ended questions -- he's entitled
22 to give you an open-ended answer.

23 MR. GRINDLINGER: That was not --

24 MS. GOODMAN: Please --

25 MR. GRINDLINGER: -- an open-ended

1 CARGIAN

2 question, he certainly -- he certainly
3 can tell me if he doesn't understand
4 the question.

5 MS. GOODMAN: I won't let him
6 answer a question, though, that makes
7 absolutely no sense. So I will direct
8 him not to answer when a question winds
9 up making absolutely no sense.

10 Please read the question.

11 (The last question was read back by
12 the court reporter.)

13 MS. GOODMAN: Okay. Objection.

14 And I won't let him answer until we
15 zero in at least on some time on that
16 day. Was it appropriate --

17 Q Do you think it was appropriate to use
18 a curse word in front of your colleagues?

19 MS. GOODMAN: Objection to form.

20 THE COURT REPORTER: But I can
21 answer the question, right?

22 MS. GOODMAN: Yes.

23 A Do I think -- just ask the question
24 once more time. I'm sorry.

25 Q Do you think it was appropriate to use

1 CARGIAN

2 a curse word in front of your colleagues?

3 A Yes, as many -- we always did, amongst
4 ourselves.

5 Q Do you think it was appropriate to use
6 a curse word in front of guests?

7 A No, and I didn't.

8 Q Do you think it's appropriate to raise
9 your voice to the president of the company?

10 A If I was blatantly being taken
11 advantage of, yes.

12 Q Do you think it's appropriate to raise
13 your voice to the president of the company in
14 front of guests?

15 A No, and I never have.

16 Q Do you consider --

17 MS. GOODMAN: We're not -- there
18 was no question pending.

19 MR. GRINDLINGER: Oh, and I'm not
20 saying there was.

21 Just off the record.

22 (An off-the-record conversation was
23 held.)

24 Q Would it be fair to characterize this
25 e-mail as a written warning?

1 CARGIAN

2 A -- but she may have had others, but I
3 don't remember.

4 Q And in 2010, to your knowledge, who set
5 your sales goals?

6 A Ms. Bodman and Mr. Anderson.

7 Q 2011, who set your sales goals?

8 A Marie Bodman and Mr. Prissert.

9 Q 2012, who set your sales goals?

10 A Mr. Prissert and Mr. Anderson.

11 Q 2013, who set your sales goals?

12 A Mr. Prissert and Mr. Anderson.

13 Q How were your sales goals communicated
14 to you?

15 MS. GOODMAN: Objection to form.

16 A They were -- it was a process. We
17 would come up with goals of our own, and they
18 would come up with goals of theirs. We would
19 meet, and they would have the final say, say
20 whatever numbers that were the numbers that they
21 wanted, so...

22 Q And when was that established? In what
23 part of the year?

24 MS. GOODMAN: Objection to form.

25 A In January.

1 CARGIAN

2 A Um... I would have to go back to my
3 records to research that. 2011 and 2012 for
4 sure, but I would have to go back and look.

5 Q And the 2011 were set by Ms. Bodman and
6 Mr. Prissert?

7 A Yes.

8 Q And Mr. Anderson?

9 A Yes.

10 Q And the 2012 --

11 MS. GOODMAN: To his knowledge. To
12 his knowledge.

13 MR. GRINDLINGER: Please refrain
14 from speaking objections. If this
15 continues, we're going to have to get
16 the Court involved. You know the
17 rules.

18 Q In 2012, it was set by Mr. Anderson and
19 Mr. Prissert?

20 A As far as I know, yes.

21 Q Any other years that you believe they
22 were set unreasonably or unfairly high?

23 A I would have to look back at my
24 records.

25 Q Why do you believe your goals in 2011

1 CARGIAN

2 were set unfairly high?

3 A I think that... I think that
4 Mr. Prissert wanted to put me in a position
5 where I was sure to fail.

6 Q And --

7 A And -- oh.

8 Q Is that it?

9 A That's it.

10 Q And why do you believe that?

11 A Because when I had heard what the
12 increase was, immediately, of course, I went to
13 him and I was like, This is absolutely
14 unattainable. And he just disregarded it and
15 said, Oh well, too bad. And had to -- he
16 mentioned no way of helping or changing it or...

17 Q Do you recall --

18 A Modifying it.

19 Q Do you recall what your goals were
20 in 2010?

21 A Ah, not off the top of my head, no.

22 Q Do you know if you achieved your goals
23 for 2010?

24 A Not off the top of my head, no.

25 Q Do you know if other employees

1 CARGIAN

2 What about 2012, why do you believe
3 your goals were set unreasonably, unfairly high
4 in 2012?

5 A Again, there was no regard for my prior
6 year, what my numbers were. I was just given a
7 number, and it was not substantiated how I was
8 to reach that number, other than, You have to do
9 this.

10 Q Do you recall what the difference was
11 between your 2011 and 2012 sales goals?

12 A The only thing I can recall is '11 was
13 many millions of dollars, because of my
14 territory. That's all I remember.

15 Q Did you discuss with anyone other than
16 Mr. Prissert about your 2000 (sic) sales goals
17 being unfairly high?

18 A You have to repeat that. You said,
19 "2000."

20 Q 2011.

21 A Oh, 2011.

22 Q With respect to your 2011 sales goals,
23 other than Mr. Prissert, did you discuss with
24 anyone else your belief that they were
25 unreasonable --

1 CARGIAN

2 A Mr. --

3 Q -- unfairly high?

4 A Mr. Anderson and Ms. Bodman.

5 Q What was Mr. Anderson's response?

6 A It's out of my hands; I have to, you
7 know, go with what Mr. Prissert had put as my
8 new goal.

9 Q What about Ms. Bodman?

10 A She had said, I'm reviewing; it's up to
11 Mr. Prissert.

12 Q Did you speak to anyone else about your
13 2011 goals being unfairly high?

14 A No.

15 Q What about your 2012 goals, did you
16 speak to anyone about them being unfairly high?

17 A I did talk to Mr. Anderson about it.

18 Q And what was Mr. Anderson's response?

19 A I don't recollect what it was.

20 Q Anyone else with respect to your 2012
21 goals that you spoke to other than Mr. Anderson?

22 A I don't recollect.

23 Q Did you speak to Annie Sommer about
24 your 2011 sales goals?

25 A I don't remember talking to her

1 CARGIAN

2 Q And in this e-mail, he's lowering your
3 2013 sales goals?

4 A Yes. Again, he did the whole
5 company's.

6 Q But you didn't believe your 2013 sales
7 goals were set unfairly high?

8 A No, I said I would have to look back at
9 those numbers. I said I didn't know.

10 Q In this e-mail, Mr. Prissert says he's
11 wishing you to succeed?

12 A Yes.

13 Q Did you believe him?

14 A Well, yes, because his salary is based
15 on how well we do, so I would think he would
16 want me to.

17 Q So he would want you to achieve your
18 sales goals?

19 A Ah, well... I... I don't know. I
20 don't think he really would, because he was,
21 that year, constantly treating me different than
22 all the straight guys that worked at the
23 company, so I don't know. Maybe at that
24 instance he did, but I don't think overall he
25 did.

1 CARGIAN

2 Q Any comments about your gender by
3 Mr. Anderson?

4 A He did say that I was one of the girls.

5 Q When did Mr. Anderson say that you were
6 one of the girls?

7 A It was in Vegas, but I don't recall the
8 year.

9 Q Was anyone present when he made that
10 comment?

11 A From what I remember, there was
12 somebody. I don't know who it was, though, or
13 how many.

14 Q Any other comments by Mr. Anderson?

15 A No.

16 Q About your gender?

17 A No.

18 Q Did Mr. Prissert ever make a comment
19 about your age?

20 A No.

21 Q Did Mr. Prissert ever make a comment
22 about your sexual orientation?

23 A No.

24 Q Did Mr. Prissert ever make a comment
25 about your gender?

1 CARGIAN

2 A He -- well, he called me "darling" one
3 time at dinner, which I was a little shocked at,
4 like I was one of the girls.

5 Q Other than that one comment about
6 calling you "darling," any other comments about
7 your gender?

8 A No.

9 Q When was that comment made?

10 A I don't know what year it was. I know
11 who was there, but I don't know. It was a
12 restaurant in New York City.

13 Q Who else was there?

14 A Ms. Haddad and Mr. Anderson.

15 Q Have you explained to me all the ways
16 that Mr. Prissert allegedly discriminated
17 against you?

18 A Yes.

19 MR. GRINDLINGER: I would like this
20 marked as B-27.

21 (Complaint was marked Exhibit B-27
22 for identification.)

23 Q Do you recognize this document?

24 A Yes.

25 Q What is it?

EXHIBIT 10

Total Sales 2012 vs. 2011

BREITLING

Total Sell in BUSA

2012- 23,687 units (-14.97%)

2011 - 27,857 units

Units sold in per door

•2012.- 84 units

•2011 - 90 units

Total Sell out BUSA

2012- 20,203 units (-7.6%)

2011 - 21,873 units

Units sold out per door(excludes retail)

•2012.- 64 units

•2011- 67 units

Total POS

2012: 282

2011: 295

Doors Opened 2012: 29

Doors Closed 2012.: 42

Total Bentley Doors: 159
(14 fewer than 2011)



INSTRUMENTS FOR PROFESSIONALS™

BREITLING_9062

| Negative | Positive |
|--|---|
| <p>We finished the year missing the goal.</p> <p>Sell out declined in total units</p> <p>Implementation of Top Range was not ideal (gold pieces)</p> <p>Bentley sales continued to decline in sell in and sellout with reduced distribution.</p> <p>Tourneau sellout declined</p> <p>Poor use of tools- iPad, Challenge, GWP</p> <p>Boring reporting – competition</p> <p>Low Training figures</p> | <p>In House sales increases – clear message about our future and the need to develop in house sales at each POS</p> <p>Implemented a major change in philosophy regarding pricing, respect of the brand and luxury presentation.</p> <p>Store visits increased which yielded a slight increase in dollars.</p> <p>Average price sold in increased 18% and surpassed target goal of \$4,300</p> <p>Reduced inventory on hand while improving the product mix at the POS</p> <p>Cleaning of regions</p> |

A-457

EXHIBIT 11

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FREDERICK M. CARGIAN,

Plaintiff,

-against-

BREITLING USA, INC.,

Defendant.

Civil Action No. 15-cv-01084
-----X

630 Third Avenue
New York, New York

January 21, 2016
10:06 a.m.

DEPOSITION of ANNIE SOMMER, taken
pursuant to subpoena, before Alexis Perez Jenio,
a Shorthand Reporter and Notary Public of the
State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 111528A

1 SOMMER

10:12:05 2 in the treatment of Fred?

10:12:07 3 A I believe so.

10:12:08 4 Q And what did you say?

10:12:09 5 A I... I don't recall what I said.

10:12:14 6 Q Did you tell him that Fred Cargian was
10:12:18 7 treated more or less the same way the girls
10:12:21 8 were?

10:12:21 9 A I don't recall.

10:12:31 10 Q Do you recall having a conversation
10:12:32 11 with me?

10:12:33 12 A Um, yes.

10:12:35 13 Q And do you recall telling me that Fred,
10:12:39 14 that from your observation, that Fred was
10:12:41 15 treated like the same way the girls were?

10:12:44 16 A Yes.

10:12:44 17 Q And is that what you observed, that he
10:12:48 18 was treated the way the girls were?

10:12:51 19 A I do feel that, yes.

10:12:59 20 Q Do you believe that you probably told
10:13:01 21 that to Mr. Singer?

10:13:09 22 A I may have --

10:13:12 23 MR. SINGER: Objection.

10:13:13 24 Q You may have?

10:13:14 25 A I may have. I don't remember the

1 SOMMER

10:18:27 2 A Yes.

10:18:29 3 Q Was attendance at this conference

10:18:37 4 compulsory?

10:18:38 5 A Can you rephrase it?

10:18:40 6 Q Were you expected that -- it wasn't

10:18:43 7 asked, you know, would you like to go or were

10:18:46 8 selected to go. Was it expected that all sales

10:18:49 9 reps would go to this conference?

10:18:52 10 A Yes.

10:18:52 11 Q And were rooms assigned to you and

10:18:57 12 roommates assigned to you at this conference?

10:19:01 13 A Yes.

10:19:01 14 Q Did anybody ever ask you who you wanted

10:19:04 15 to room with?

10:19:06 16 A No.

10:19:06 17 Q Was any notice ever sent out saying,

10:19:10 18 you know, you have to share rooms, who would you

10:19:14 19 like to room with?

10:19:16 20 A No.

10:19:16 21 Q Did you ever ask to share a room with

10:19:19 22 Fred Cargian?

10:19:20 23 A No.

10:19:28 24 Q Did there come a time in 2013 when you

10:19:32 25 were in fact assigned to share a room with Fred

1 SOMMER

10:19:35 2 Cargian?

10:19:35 3 A Yes.

10:19:35 4 Q And were you uncomfortable to share a
10:19:38 5 room with Fred?

10:19:39 6 A Yes.

10:19:39 7 Q Did you tell anyone that this was
10:19:42 8 really not to your liking?

10:19:43 9 A I don't recall.

10:19:50 10 Q Did you tell your family or anybody,
10:19:53 11 even outside of Breitling --

10:19:55 12 A Yes.

10:19:56 13 Q -- your discomfort?

10:19:57 14 A Yes.

10:19:57 15 Q Who did you tell?

10:20:00 16 A Probably my best friend, Sarah.

10:20:04 17 Q Anybody else?

10:20:07 18 A Um... my mom. I don't know.

10:20:10 19 Q Okay. Did you ever tell Ms. Figueroa?

10:20:18 20 MS. GOODMAN: Well, withdrawn.

10:20:20 21 Q Who notifies you that this is the room,
10:20:22 22 you know, that you're going to be --

10:20:25 23 A Mr. Prissert told me.

10:20:26 24 Q And when he told you, what did you say
10:20:29 25 to him?

1 SOMMER

10:20:30 2 A Oh.

10:20:32 3 Q Why didn't you say, Gee, this is
10:20:34 4 uncomfortable for me?

10:20:35 5 A It was -- I mean, it was a long time
10:20:39 6 ago, so maybe I did. I don't recall the exact
10:20:42 7 conversation.

10:20:46 8 Q Were you concerned about complaining to
10:20:49 9 him because he was your boss?

10:20:54 10 A Possibly.

10:20:58 11 Q Was the sole purpose of this
10:21:04 12 conversation you had with Mr. Prissert for him
10:21:07 13 to tell you about the assignment? Was that the
10:21:11 14 sole purpose of that conversation or was it in
10:21:18 15 the context of something else?

10:21:19 16 MR. LIPSKY: Objection to form;
10:21:21 17 calls for speculation and compound.

10:21:24 18 MR. SINGER: Same objection.

10:21:25 19 Q Well, was anything else discussed at
10:21:27 20 this meeting where Mr. Prissert said you're
10:21:30 21 assigned to share a room with Mr. Cargian?

10:21:33 22 A I don't remember.

10:21:54 23 Q Directing your attention to the end of
10:21:57 24 2012, did there come a time that you were told
10:22:00 25 that your territory was being changed and your

1 SOMMER

10:23:33 2 Q When Mr. Prissert, this meeting that
10:23:36 3 you had with Mr. Prissert, when he told you
10:23:39 4 about the change in your status, how long did
10:23:41 5 that meeting last?

10:23:43 6 A I don't recall.

10:23:45 7 Q Approximately. Was it a half hour --

10:23:51 8 A Yeah, approximately a half an hour.

10:23:54 9 Q And what did Mr. Prissert say was the
10:23:56 10 reason for changing your territory?

10:24:00 11 A So that I could -- Fred and I could
10:24:04 12 concentrate on corporate sales and I could spend
10:24:12 13 more time with my family.

10:24:21 14 Q Did he also say that he wanted to give
10:24:25 15 Isaac territory?

10:24:27 16 A I don't recall.

10:24:27 17 Q When you said he was making this change
10:24:31 18 so you can have more time with your family, is
10:24:35 19 that what he said to you?

10:24:39 20 A Yes. There was a restructuring of the
10:24:46 21 territories.

10:24:46 22 Q Is that what he told you?

10:24:48 23 A Yes.

10:24:48 24 Q And that restructuring was to give
10:24:53 25 Mr. Schafrath a territory?

1 SOMMER

10:35:49 2 MR. LIPSKY: Objection to form; it
10:35:52 3 calls for speculation. You can answer.

10:35:55 4 A In 2014?

10:35:56 5 Q Yes.

10:36:08 6 A I don't know.

10:36:09 7 Q Well, wasn't -- Mr. Cargian was
10:36:17 8 terminated at the end of 2013, correct?

10:36:20 9 A Yes.

10:36:20 10 Q And, as a consequence, you were given
10:36:22 11 all of his territories?

10:36:24 12 A Yes.

10:36:24 13 Q Was it your understanding that that's
10:36:27 14 why your salary was restored?

10:36:30 15 A Yes.

10:36:46 16 Q Now, we've already discussed a bit that
10:36:50 17 you thought that with Mr. Prissert's emergence
10:36:58 18 as company president, that there was an
10:37:01 19 atmosphere among sale reps as a boys' club
10:37:04 20 atmosphere, correct?

10:37:06 21 MR. SINGER: Objection to the form.

10:37:08 22 Q You can answer.

10:37:09 23 A Yes.

10:37:09 24 Q And did you believe the women were
10:37:13 25 treated less favorably than the male sales reps?

1 SOMMER

10:45:15 2 MS. GOODMAN: Okay. Let me talk
10:45:17 3 with Mr. Cargian and see if we have any
10:45:19 4 further questions.

10:45:26 5 (A recess was taken.)

10:45:26 6 EXAMINATION CONTINUED

10:53:24 7 BY MS. GOODMAN:

10:53:24 8 Q I just have a few more questions,
10:53:27 9 Ms. Sommer.

10:53:28 10 A Okay.

10:53:28 11 Q Did you ever hear either Mr. Criddle or
10:53:32 12 others talk about an incident that he had in a
10:53:36 13 New York hotel where a hooker or a prostitute
10:53:39 14 had stolen his Breitling watch?

10:53:42 15 A No.

10:53:43 16 Q Now, you and Mr. Cargian are friends,
10:53:52 17 right?

10:53:52 18 A Yes.

10:53:52 19 Q You're good friends?

10:53:57 20 A Yes.

10:53:57 21 Q Would you lie under oath on his behalf?

10:54:01 22 A No.

10:54:02 23 Q You've spoken many times to Mr. Cargian
10:54:05 24 since his termination from Breitling, correct?

10:54:09 25 A Yes.

1 SOMMER

11:01:41 2 Q You can answer.

11:01:42 3 A I don't know.

11:01:48 4 Q Do you know if any of the other sales
11:01:50 5 reps, let's say in 2012, had children?

11:01:54 6 A Yes.

11:01:54 7 Q Which other sales reps had children in
11:01:59 8 2012?

11:02:00 9 A Josh, Patrick, Brian.

11:02:13 10 I think that's it, as far as I know.

11:02:44 11 Q When you testified earlier that you
11:02:46 12 believed at group meetings or sales shows that
11:02:52 13 the women were treated differently because they
11:02:55 14 were sometimes not treated as part of the group
11:02:58 15 or ignored, does that -- can you explain what
11:03:02 16 you mean by that?

11:03:28 17 A Just, the boys would be together
11:03:31 18 talking about their, you know, sports stuff, and
11:03:35 19 you know, Beth and I would be over, you know,
11:03:39 20 not -- just feeling excluded, and...

11:03:44 21 Q Would you be excluded when there were
11:03:47 22 business conversations taking place?

11:03:52 23 A I don't know.

11:04:09 24 Q Before 2013, did you ever share a room
11:04:15 25 with Fred Cargian on any Breitling events?

1 SOMMER

11:19:00 2 calls for speculation and vague.

11:19:03 3 You can answer.

11:19:04 4 THE WITNESS: Can you read back the
11:19:05 5 question? Thank you.

11:19:05 6 (The last question was read back by
11:19:20 7 the court reporter.)

11:19:20 8 A I don't know.

11:19:20 9 Q What's your understanding as to why
11:19:24 10 Mr. Cargian made the statement he did about only
11:19:27 11 working 9:00 to 5:00?

11:19:28 12 MS. GOODMAN: Objection. If she
11:19:30 13 had any understanding.

11:19:34 14 A His goals were bigger than some of the
11:19:37 15 other ones.

11:19:57 16 Q When you told Ms. Goodman earlier that
11:20:02 17 Mr. Prissert told you that he was reducing your
11:20:04 18 territory so that Fred and you could concentrate
11:20:09 19 on corporate sales and spend more time with your
11:20:13 20 family, do you recall that testimony?

11:20:14 21 A Yes.

11:20:15 22 Q Had you previously mentioned or
11:20:18 23 discussed your desire to spend more time with
11:20:22 24 your family with Mr. Prissert?

11:20:24 25 A No.

1 SOMMER

11:20:56 2 Q Were you present at the bowling alley
11:20:59 3 in Reno when Mr. Cargian cursed at Mr. Prissert?

11:21:03 4 MS. GOODMAN: Objection to form.

11:21:04 5 MR. LIPSKY: Objection to form;
11:21:05 6 lack of foundation. You can answer.

11:21:07 7 MS. GOODMAN: Assumes facts that
11:21:09 8 are absolutely not in evidence.

11:21:12 9 Q You can answer.

11:21:12 10 A Yes.

11:21:13 11 Q And what do you recall about that
11:21:15 12 incident?

11:21:22 13 A Fred and I walked all the accounts over
11:21:24 14 from dinner to the bowling alley, and when we
11:21:28 15 got to the top of the stairs, there was
11:21:31 16 Mr. Prissert and a couple of other reps, with no
11:21:34 17 accounts, already bowling.

11:21:35 18 Q And what did you observe Mr. Cargian do
11:21:38 19 at that point?

11:21:39 20 A He said, I -- exact words, I don't
11:21:44 21 recall, but it was -- he said, What the fuck, I
11:21:48 22 think.

11:21:48 23 Q And did he say that in the presence of
11:21:51 24 Mr. Prissert?

11:21:54 25 MR. LIPSKY: Objection to form;

1 SOMMER

11:21:55 2 calls for speculation. You can answer.

11:22:00 3 A They were far away from each other,

11:22:05 4 but, I mean...

11:22:08 5 Q How far would you estimate?

11:22:10 6 A Um... farther than me and that corner

11:22:14 7 (indicating).

11:22:15 8 Q More than 15 feet away from each other?

11:22:18 9 A I believe so.

11:22:19 10 Q And when you heard Mr. Cargian say, to

11:22:22 11 your recollection, What the fuck, where was he

11:22:25 12 looking?

11:22:27 13 MR. LIPSKY: Objection to form;

11:22:29 14 calls for speculation. You can answer.

11:22:33 15 A I -- I don't recall.

11:22:37 16 Q Do you believe he was directing his

11:22:39 17 comment toward Mr. Prissert?

11:22:40 18 MS. GOODMAN: Objection.

11:22:41 19 Objection; calls for speculation.

11:22:43 20 How does she have any idea?

11:22:46 21 A I don't know.

11:22:52 22 MR. SINGER: Counsel, I would again

11:22:54 23 ask that you please stop the speaking

11:22:56 24 objections and putting words in the

11:22:59 25 witness's mouth. It's now the tenth

1 SOMMER

11:31:16 2 A Yes.

11:31:16 3 MR. LIPSKY: Objection -- sorry.

11:31:19 4 Objection to form; lack of foundation,

11:31:21 5 vague. You can answer.

11:31:22 6 Q And did you have any reason to believe

11:31:25 7 that those sales numbers that you were sent by

11:31:29 8 e-mail on a regular basis were incorrect?

11:31:38 9 THE WITNESS: Can you read back the

11:31:39 10 question?

11:31:39 11 (The last question was read back by

11:31:48 12 the court reporter.)

11:31:48 13 MR. LIPSKY: Objection to form;

11:31:50 14 vague. You can answer it.

11:31:52 15 A No.

11:31:53 16 Q At the yearly sales meetings you were

11:31:58 17 presented with slides that showed all of the

11:32:01 18 sales representatives' sales numbers. Is that

11:32:04 19 correct?

11:32:04 20 A Yes.

11:32:04 21 Q Did you have any reason to believe that

11:32:07 22 those numbers were incorrect?

11:32:09 23 A No.

11:32:10 24 MS. GOODMAN: Objection.

11:32:13 25 Q While you were a sales representative

1 SOMMER

11:32:15 2 at Breitling USA, did you have access to the
11:32:20 3 computer system that tracked sales data?

11:32:24 4 MR. LIPSKY: Objection to form;
11:32:26 5 lack of foundation. You can answer.

11:32:33 6 Q Do you understand what I'm asking?

11:32:35 7 A No, I don't.

11:32:36 8 Q Okay.

11:32:43 9 Breitling USA has a computer that
11:32:46 10 tracks all of the sales data, correct?

11:32:48 11 MS. GOODMAN: Objection. Can you
11:32:50 12 give some dates and times of it?

11:32:53 13 MR. SINGER: No.

11:32:56 14 MS. GOODMAN: No? So you're asking
11:32:58 15 at any time?

11:32:58 16 Q There's a system that tracks sales data
11:33:00 17 in place at Breitling's USA, correct?

11:33:04 18 A Yes.

11:33:04 19 Q And, as a sales representative, while
11:33:07 20 you worked at Breitling USA, over the last five
11:33:10 21 years, let's say, you yourself could go access
11:33:14 22 that system and see your sales numbers, correct?

11:33:17 23 A Correct.

11:33:17 24 Q So if you had a reason to believe that
11:33:19 25 the sales numbers that were presented to you,

1 SOMMER

11:46:48 2 A Maybe I don't understand what you're
11:46:52 3 asking.

11:46:52 4 Q Well, when you talked about going on
11:46:55 5 vacation with Mr. Cargian, are there any
11:46:58 6 vacations that you're talking about other than
11:47:01 7 those that were hooked on either before or after
11:47:05 8 a Breitling event?

11:47:07 9 MR. LIPSKY: Objection to form;
11:47:09 10 compound. You can answer.

11:47:11 11 Q Do you understand my question?

11:47:14 12 A Um, not... not really, no.

11:47:17 13 Q You're not really understanding the
11:47:21 14 question?

11:47:21 15 A I'm not really understanding the
11:47:23 16 question. So --

11:47:24 17 Q Go ahead.

11:47:24 18 A So can I ask you a question?

11:47:26 19 Q Yes, please.

11:47:27 20 A So you're talking about the pre- or
11:47:32 21 post-Basel trips?

11:47:33 22 Q Yes.

11:47:33 23 A And did we stay together?

11:47:35 24 Are you asking me if we stayed together
11:47:38 25 in pre- or post-Basel trips?

1 SOMMER

11:47:41 2 Q No, that's not really -- I was asking
11:47:44 3 you, were there vacation trips that you took
11:47:47 4 other than those pre- or post-Basel trips?

11:47:51 5 Were there other vacation trips that
11:47:53 6 you took, and other than your 50th birthday
11:47:56 7 party? Were there other vacation trips that you
11:47:59 8 took with Mr. Cargian other than those pre- or
11:48:04 9 post-Basel trips?

11:48:06 10 MR. LIPSKY: Objection to form;
11:48:09 11 compound. You can answer.

11:48:14 12 A Yes. I mean, we've taken vacations,
11:48:19 13 but we didn't room together.

11:48:21 14 Q Okay. So when you talk about when you
11:48:23 15 roomed together, it was one -- it was associated
11:48:27 16 with the Basel trip. Is that correct?

11:48:29 17 A Yes.

11:48:32 18 MS. GOODMAN: We'd like to -- I
11:48:34 19 mean, I have a number of other
11:48:35 20 questions to ask. I'd like to prepare
11:48:37 21 for the conference with the judge and
11:48:40 22 take it later.

11:48:43 23 MR. SINGER: We have 10 minutes.
11:48:46 24 I'm happy to keep going, but whatever.

11:48:49 25 MS. GOODMAN: Off the record.

1 SOMMER

12:42:41 2 of you shared a room at the Basel conference?

12:42:45 3 MR. SINGER: Objection.

12:42:51 4 A I -- no -- I don't recall.

12:42:53 5 Q Now, is it your understanding that --

12:43:08 6 directing your attention to the fourth

12:43:11 7 paragraph, is it your understanding, where he

12:43:12 8 says, "Annie and I have shared rooms all the

12:43:16 9 years we have attended." So your understanding

12:43:19 10 of what he was saying is that "we always,"

12:43:20 11 everybody always shared rooms at the Basel fair?

12:43:24 12 A Yeah.

12:43:24 13 MR. SINGER: Objection.

12:43:34 14 Q You were asked by Mr. Singer about

12:43:38 15 Gladney?

12:43:39 16 A Yes.

12:43:39 17 Q That's a foundation?

12:43:42 18 A Yes.

12:43:42 19 Q And that's a foundation through which

12:43:44 20 you adopted your children. Is that correct?

12:43:47 21 A Yes.

12:43:47 22 Q And did there come a time when there

12:43:51 23 was some sort of function that Gladney held, I

12:43:58 24 believe in Texas, where Mr. Prissert attended?

12:44:04 25 MR. LIPSKY: Objection to form;

1 SOMMER

12:46:10 2 give away Breitling catalogs and stuff like

12:46:13 3 that.

12:46:13 4 Q And what did he say?

12:46:15 5 A I don't recall.

12:46:15 6 Q Did he reject your request?

12:46:19 7 A No, but I didn't go.

12:46:21 8 Q How come you didn't go?

12:46:22 9 A It just didn't seem to work out.

12:46:26 10 Q You were asked about accessing the

12:46:37 11 computer information. I understand that up

12:46:45 12 until quite recently, that part of the computer

12:46:50 13 function had to be manually fed. In other

12:46:58 14 words, there --

12:47:00 15 MS. GOODMAN: Well, let me withdraw

12:47:02 16 that.

12:47:03 17 Q My understand is that the computer, the

12:47:03 18 figures that were generated, will show what your

12:47:07 19 sales, what each salesperson's sales were for a

12:47:11 20 given moth. Is that correct?

12:47:14 21 A Yes.

12:47:15 22 Q And that it's not that sometimes -- not

12:47:25 23 sometimes, often sales representatives are

12:47:28 24 sharing a client. Is that correct?

12:47:31 25 A Correct.

1 SOMMER

12:47:32 2 Q And that an adjustment has to be made
12:47:36 3 so that what the sales are to that client are
12:47:40 4 properly attributed to those made by Sales Rep 1
12:47:45 5 and those made by Sales Rep 2, where there's a
12:47:49 6 shared client. Is that correct?

12:47:50 7 A Correct.

12:47:51 8 Q Now, are those adjustments
12:47:58 9 automatically made in the computer system?

12:48:00 10 A No.

12:48:00 11 Q And how do you find out how those
12:48:06 12 adjustments are made?

12:48:08 13 A The person making the spreadsheet, I
12:48:10 14 guess, is doing the breakdowns based on total --
12:48:14 15 from my -- from my shared accounts, it was the
12:48:21 16 lead rep would get the numbers from the store
12:48:24 17 and then divide up the sell-in in the same way
12:48:29 18 as the sell-out.

12:48:36 19 Q Now -- so if you weren't the lead, how
12:48:41 20 would you know whether the adjustments were
12:48:44 21 being accurately made?

12:48:45 22 A You would have to request the sell-out
12:48:47 23 from the lead.

12:48:50 24 Q So it would not be automatic; it would
12:48:54 25 be manual?

1 SOMMER

12:48:55 2 A It would be manual.

12:48:56 3 Q And do you know what underlying

12:48:58 4 documents are used in order for the computer to

12:49:03 5 generate its various reports?

12:49:05 6 A No.

12:49:06 7 Q Okay.

12:49:07 8 A I mean, I would guess it's billing out.

12:49:11 9 I mean, anything you bill out goes into the

12:49:15 10 numbers for that store.

12:49:15 11 Q Okay.

12:49:18 12 A If you bill out in that key.

12:49:19 13 Q Now, that would be of late you have had

12:49:23 14 the system where you go into the store with some

12:49:28 15 sort of electronic device that automatically

12:49:33 16 does certain things, correct?

12:49:35 17 A Correct.

12:49:35 18 Q That hasn't always been true, has it?

12:49:39 19 A No.

12:49:39 20 Q Now, let's go back to 2010 or 2011.

12:49:45 21 What underlying documents would be used

12:49:47 22 to make a determination -- to generate their

12:49:52 23 final computer reports?

12:49:53 24 A It would be -- the sell-out report, the

12:49:57 25 year-to-date numbers.

1

SOMMER

12:49:59 2 Q What -- but the year-to-date numbers
12:50:02 3 are already in the computer reports?

12:50:04 4 A Right.

12:50:05 5 Q Okay.

12:50:06 6 A Are you talking about spreadsheets?

12:50:08 7 Q No, I'm asking, where does the --

12:50:11 8 A Oh, the --

12:50:13 9 Q -- the little man who fills in the
12:50:15 10 computer --

12:50:15 11 A Oh.

12:50:15 12 Q Where does -- where do they get -- do
12:50:18 13 you participate at all in producing the
12:50:20 14 underlying documents, the underlying documents
12:50:23 15 which --

12:50:23 16 A No.

12:50:23 17 Q -- the computer generates?

12:50:25 18 A No.

12:50:25 19 MR. SINGER: Objection to the form.

12:50:26 20 Q And do you know what underlying
12:50:28 21 documents are used for the computer to generate
12:50:31 22 whatever reports it makes?

12:50:33 23 A No.

12:50:34 24 Q So do you keep for yourself what you
12:50:36 25 believe to be your figures, so that if the

1 SOMMER

12:50:39 2 computer generates something that's wrong, that
12:50:42 3 you think is wrong, you can go to somebody and
12:50:45 4 say, Hey, I think there's a mistake?

12:50:48 5 A No.

12:50:48 6 Q You didn't do that?

12:50:50 7 A No.

12:50:50 8 Q So how would you know whether the
12:50:53 9 numbers were right or wrong? Was it just sort
12:50:56 10 of, it looks right?

12:50:58 11 A Yes.

12:50:58 12 Q So basically it was, It looks right to
12:51:04 13 me?

12:51:05 14 A Um-hmm. Yes.

12:51:18 15 Q Now, you talked about -- Mr. Singer
12:51:22 16 asked about you talking about your children with
12:51:25 17 Mr. Prissert. Would it be fair to say that you
12:51:29 18 might have seen Mr. Prissert more often than
12:51:32 19 other sales reps because you live in Connecticut
12:51:35 20 and use the Connecticut office more often than
12:51:38 21 others?

12:51:39 22 A No.

12:51:39 23 MR. SINGER: Objection.

12:51:45 24 Q No?

12:51:46 25 A No.

1 SOMMER

12:52:55 2 have been on?

12:52:56 3 A On the Emergency watch. It's the --

12:52:58 4 Q What?

12:52:59 5 A On the Emergency watch. It's the name

12:53:02 6 of a watch.

12:53:03 7 Q Oh, I see.

12:53:04 8 Now, you were asked before about a
12:53:06 9 meeting where Mr. Singer said that Mr. Cargian
12:53:09 10 said, I'm only working 9:00 to 5:00, correct?

12:53:12 11 A Correct.

12:53:12 12 Q And if I suggested that meeting was in
12:53:16 13 2013 not 2012, would that refresh your
12:53:19 14 recollection?

12:53:20 15 MR. SINGER: Objection.

12:53:21 16 A I don't -- I don't recall.

12:53:23 17 Q Isn't it true you weren't at the 2012
12:53:33 18 sales meeting?

12:53:36 19 A Um, I don't recall. I -- my son was
12:53:42 20 born in May, so I think I would be at the sales
12:53:46 21 meeting, because it's usually January or
12:53:48 22 February, but I don't -- I can't be certain.

12:54:03 23 Q If I suggest -- if I tell you that that
12:54:06 24 meeting was held in Florida, would that refresh
12:54:09 25 your recollection?

1 SOMMER

12:54:10 2 A In Orlando?

12:54:12 3 Q I don't know. Was it held in Orlando?

12:54:15 4 A I was in attendance in Orlando.

12:54:24 5 Q Okay. When Mr. Cargian made this

12:54:27 6 comment about the 9:00 to 5:00, isn't it true,

12:54:35 7 that that was at the same time that you were all

12:54:37 8 told about the reduction in your salaries and

12:54:43 9 the change in your territory?

12:54:46 10 A I don't recall.

12:54:48 11 Q Isn't it true it was also the same time

12:54:51 12 that you were informed about the fact that you

12:55:02 13 were losing your comp time?

12:55:10 14 A I don't recall.

12:55:11 15 Q Let's go back.

12:55:12 16 Isn't it true that there came a time

12:55:14 17 that Mr. Prissert told you that there would be a

12:55:16 18 change in the comp time?

12:55:23 19 A Yes.

12:55:24 20 Q And what did he say would be the

12:55:29 21 changes?

12:55:30 22 A I believe he said that, um, there was

12:55:33 23 no more comp time.

12:55:35 24 Q Were there any other benefits that he

12:55:38 25 pulled back?

1 SOMMER

12:55:39 2 A Um, we had to use, um, a week of our
12:55:44 3 vacations for the mandatory vacations.

12:55:48 4 Q What's the mandatory vacation? I'm
12:55:51 5 sorry.

12:55:51 6 A The week between Christmas and New
12:55:54 7 Year's and the --

12:55:56 8 Q I see?

12:55:57 9 A -- and there's one week in the summer.

12:56:00 10 Q Did you really think that when
12:56:03 11 Mr. Cargian made this comment, that he was
12:56:06 12 serious about working -- only working
12:56:10 13 9:00 to 5:00?

12:56:11 14 MR. SINGER: Objection.

12:56:12 15 A No.

12:56:25 16 Q Now let's go back to this -- I think
12:56:31 17 was the Reno or Las Vegas bowling alley
12:56:35 18 incident.

12:56:36 19 I think you described it as you and
12:56:39 20 Mr. Cargian were leading some of the clients to
12:56:43 21 the bowling alley --

12:56:44 22 A Yes.

12:56:44 23 Q -- correct?

12:56:45 24 And you were at the top of the stairs
12:56:47 25 of the bowling alley, and you saw that

1

SOMMER

12:56:51 2 Mr. Prissert and two other -- well, some other
12:56:56 3 Breitling staff people were already bowling,
12:57:01 4 correct?

12:57:01 5 A Correct.

12:57:01 6 Q And they weren't attending to clients,
12:57:05 7 were they?

12:57:06 8 A No.

12:57:08 9 Q Now, trying to get the dimensions of
12:57:14 10 this facility, were there 50 lanes at this
12:57:21 11 bowling alley, or approximately 50 lanes?

12:57:25 12 A It was huge. I mean, it's huge.

12:57:27 13 Q And you said that you were at the top
12:57:33 14 of the stairs, but you were 15 -- maybe you were
12:57:36 15 at least 15 feet away. Might it have been
12:57:44 16 30 feet away?

12:57:44 17 A It could have been.

12:57:45 18 Q It could have been even more than that?

12:57:49 19 A I -- yes -- I don't. It could have
12:57:50 20 been. I don't have... that spatial remembrance.

12:57:54 21 Q But it's pretty far away?

12:57:57 22 A I --

12:58:00 23 MR. SINGER: Objection.

12:58:02 24 A Yes.

12:58:02 25 Q Do you remember telling me that you did

1 SOMMER

12:58:04 2 not think that Fred was addressing that comment,
12:58:09 3 the comment that he made, to Mr. Prissert?

12:58:11 4 A Yes.

12:58:11 5 Q So, in other words, when he said, What
12:58:15 6 the fuck, he wasn't addressing that to
12:58:18 7 Mr. Prissert?

12:58:18 8 A I don't --

12:58:19 9 MR. SINGER: Objection.

12:58:21 10 MR. LIPSKY: Objection. Sorry.

12:58:22 11 Objection to form; it calls for
12:58:23 12 speculation. You can answer.

12:58:25 13 A I don't believe so.

12:58:51 14 Q Okay. This Super Bowl party that you
12:58:53 15 had, did you have this party because that was a
12:58:56 16 time when all the sales reps were in the area
12:59:00 17 for a meeting?

12:59:02 18 A Yes.

12:59:02 19 Q Did everybody attend?

12:59:08 20 A Who's "everybody"?

12:59:10 21 Q Did all the sales reps attend?

12:59:13 22 A If they were in town already, yes.

12:59:15 23 Q Did Mr. Anderson attend?

12:59:17 24 A If he was in town, yes.

12:59:18 25 Q Do you recall whether he was in town?

A-486

EXHIBIT 13

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X
FREDERICK M. CARGIAN,

Plaintiff,

-against-

BREITLING USA,

Defendant.

Civil Action No. 15-cv-01084

-----X

233 Broadway
New York, New York

November 24, 2015
10:00 a.m.

DEPOSITION of CHARLES ANDERSON,
taken before Alexis Perez Jenio, a Shorthand
Reporter and Notary Public of the State of New
York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 111261

1 ANDERSON

2 statement followed by two questions.

3 If you want to ask a question, that's

4 fine. I'm not going to tell him to

10:52:34 5 answer the question.

10:52:34 6 MS. GOODMAN: Read my question

10:52:36 7 back, please.

10:52:36 8 (The last question was read back by

10:52:55 9 the court reporter.)

10:52:55 10 Q Did you understand that Ms. Haddad was

10:52:58 11 complaining that she was being treated unfairly

10:53:01 12 because she was a woman?

10:53:01 13 MR. SINGER: Objection to the form.

10:53:02 14 You can answer.

10:53:07 15 A Yes.

10:53:10 16 Q That's a fairly serious allegation

10:53:14 17 against the CEO of the company, is it not -- or

10:53:19 18 the president of the company, is it not?

10:53:20 19 MR. SINGER: Objection.

10:53:22 20 You can answer.

10:53:36 21 (Pause)

10:53:48 22 Q Do you need more time to answer, Mr. --

10:53:51 23 A I'm thinking about the circumstances

10:53:53 24 around it and trying to recall the events.

10:54:04 25 Q Before you told me that you could not

1

ANDERSON

11:36:40 2 Q -- territories?

11:36:41 3 A -- simultaneous.

11:36:44 4 Q Did you agree with the adding of the
11:36:46 5 sales rep?

11:36:46 6 A Yes.

11:36:46 7 Q Why did you agree a sales rep should be
11:36:49 8 added?

11:36:49 9 A We had eight previously, so we went
11:36:53 10 back to eight.

11:36:54 11 Q That included you?

11:36:56 12 A Correct.

11:36:56 13 Q Do you have eight now?

11:36:59 14 A No.

11:36:59 15 Q And when Mr. Schafrath was removed from
11:37:03 16 his position, he was not replaced in terms
11:37:09 17 of --

11:37:10 18 MS. GOODMAN: Well, withdraw that.

11:37:12 19 Q After Mr. Cargian was terminated, you
11:37:19 20 went back to seven sales reps, correct?

11:37:22 21 A Yes.

11:37:23 22 Q And did you ask that there be an eighth
11:37:30 23 because there used to be eight and you felt that
11:37:33 24 that was the necessary complement?

11:37:36 25 A No, I did not.

1

ANDERSON

11:37:38 2 Q Why not?

11:37:39 3 A I don't think at the time I felt we
11:37:41 4 needed it then.

11:37:44 5 Q Why did you need it in 2013 and did not
11:37:48 6 need it in 2014?

11:37:55 7 A Just different times.

11:37:57 8 Q What was the difference in time?

11:37:58 9 A Just the environment.

11:37:59 10 Q What was the difference in the
11:38:01 11 environment?

11:38:01 12 A Economically, changes in the
11:38:03 13 environment.

11:38:03 14 Q What was the change in the environment
11:38:06 15 that said you only needed seven instead of eight
11:38:09 16 people?

11:38:09 17 A I felt that seven could cover the
11:38:11 18 regions adequately at that time.

11:38:13 19 Q Why could they cover the regions in
11:38:15 20 2014 but not in 2013?

11:38:17 21 A I just felt that they could.

11:38:19 22 Q Why?

11:38:20 23 A Because I did. Because I felt that it
11:38:22 24 was adequate to cover the regions.

11:38:24 25 Q So do you usually work on your feelings

1

ANDERSON

11:42:07 2 Q Is that what he told you?

11:42:12 3 A Yes.

11:42:13 4 Q Did he think that by doing this, that
11:42:18 5 Mr. Cargian might well resign?

11:42:21 6 MR. SINGER: Objection to the form,
11:42:22 7 as to what somebody else thought. You
11:42:24 8 can answer.

11:42:25 9 A I have no idea.

11:42:26 10 Q What did he express to you about what
11:42:29 11 Mr. Cargian's response would be to having his
11:42:32 12 territory reduced and his salary reduced?

11:42:35 13 A He didn't speculate with me, that I
11:42:37 14 recall.

11:42:37 15 Q Did you have any concept -- well, you
11:42:41 16 disagreed with this decision, correct?

11:42:44 17 A I felt that the territories, if... I
11:42:54 18 felt the territories needed to be somewhat even,
11:42:57 19 and if they weren't going to be, then we needed
11:43:00 20 to change the pay structure. So that's how I
11:43:02 21 felt.

11:43:03 22 Q Is there any correspondence between you
11:43:05 23 and Mr. Prissert, be it e-mail, text, anything,
11:43:10 24 where you discuss this decision to add Schafrath
11:43:18 25 and demote Cargian?

1 ANDERSON

11:43:18 2 MR. SINGER: Objection to the
11:43:20 3 characterization. You can answer.

11:43:28 4 A No.

11:43:56 5 MS. GOODMAN: This is Anderson-4.

11:43:58 6 (Two-page e-mail chain of 7/26/12,
11:43:58 7 Bates stamped Breitling_1452 and 1453,
11:43:58 8 was marked Exhibit Anderson-4 for
11:43:59 9 identification.)

11:43:59 10 MR. SINGER: Janice, two pages,
11:44:01 11 correct?

11:44:01 12 MS. GOODMAN: Yes.

11:44:02 13 MR. SINGER: Thank you.

11:44:02 14 Q I'm showing you now what's been marked
11:44:05 15 as Anderson Exhibit 4, Breitling 1452, 1453.
11:44:11 16 And it's a series of e-mails -- a string of
11:44:15 17 e-mails between you and Mr. Prissert on
11:44:24 18 July 26, 2012.

11:44:36 19 Did you and Mr. Prissert exchange the
11:44:37 20 e-mails that have now been marked as Anderson-4?

11:44:41 21 A Yes.

11:44:57 22 Q It says, "Thanks for the talk today and
11:45:00 23 keeping me moving in the right direction."

11:45:02 24 Was this a meeting -- was this a
11:45:05 25 regular meeting you had with Mr. Prissert, or

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ANDERSON

12:00:01 2 you have a long way to go." Do you see that?

12:00:03 3 A Yes.

12:00:04 4 Q And was any action taken against him as
12:00:06 5 a consequence of this?

12:00:08 6 A Not that I recall.

12:00:37 7 Q Now, did there come a time in 2013 when
12:00:40 8 it was discovered that Mr. Criddle was
12:00:44 9 misrepresenting his expense account?

12:00:48 10 A Yes.

12:00:48 11 Q And was the problem one that he was
12:00:53 12 charging personal expenses to the business as
12:00:56 13 business expenses, correct?

12:00:58 14 A Yes.

12:00:58 15 Q And was another part of the problem
12:01:01 16 that he was claiming to be at certain locations
12:01:05 17 when the expense report showed that in fact he
12:01:10 18 was at different locations?

12:01:11 19 A Yes.

12:01:12 20 Q So would you say that he was
12:01:17 21 scheduled -- that the report he submitted to you
12:01:20 22 would say he was in California but his expense
12:01:23 23 report showed he rented a car in Las Vegas on
12:01:25 24 that day. Is that correct?

12:01:27 25 A I don't recall the specifics.

1

ANDERSON

12:01:28 2 Q But was that the type of comment -- the
12:01:31 3 type of problem you found?

12:01:32 4 A Yes.

12:01:33 5 Q How did this major deception get
12:01:37 6 uncovered?

12:01:37 7 MR. SINGER: Objection to the form.

12:01:39 8 You can answer.

12:01:41 9 A Through an analysis of an expense
12:01:44 10 report.

12:01:44 11 Q Who did the analysis?

12:01:46 12 A Myself.

12:01:47 13 Q What led you to do that analysis?

12:01:52 14 A I don't recall what made me do the
12:01:55 15 analysis.

12:01:56 16 Q Do you always do an analysis of the
12:02:00 17 expense reports of your sales reps?

12:02:06 18 A I do a general review.

12:02:09 19 Q Okay.

12:02:12 20 What triggered your delving more deeply
12:02:18 21 into Mr. Criddle's 2013 expense report?

12:02:24 22 A I don't recall what triggered it.

12:02:29 23 Um... I don't recall why.

12:02:33 24 Q So you just haphazardly said, Oh,
12:02:40 25 gee --

1

ANDERSON

12:09:14 2 Q Yes.

12:09:15 3 A No.

12:09:17 4 Q So you were not concerned as to why he
12:09:19 5 was lying on his expense accounts?

12:09:22 6 MR. SINGER: Objection to the form.

12:09:23 7 You can answer.

12:09:25 8 A Yes, I was concerned.

12:09:25 9 Q Why would you not ask him, Why did you
12:09:29 10 do this?

12:09:33 11 A We had conversations with Brian during
12:09:35 12 our search.

12:09:36 13 Q Okay. So tell me about the first
12:09:40 14 conversation you had with Brian.

12:09:44 15 A It was short. We asked him where he
12:09:48 16 was. He told us where he was. I felt that it
12:09:52 17 wasn't accurate. I dug more, and then found all
12:09:57 18 of the other things that followed.

12:09:59 19 Q Was there a certain day that you called
12:10:07 20 him about and said, Where were you on that day?

12:10:09 21 A Yes.

12:10:10 22 Q What day was that?

12:10:11 23 A I have no recollection of what day that
12:10:13 24 was.

12:10:13 25 Q Where was he supposed to be?

1 ANDERSON

12:10:18 2 A I believe he was supposed to be in
12:10:22 3 Artesia, California, and he was in San Diego.

12:10:28 4 Q And when you called him, he continued
12:10:31 5 to lie?

12:10:32 6 A Yes.

12:10:33 7 Q So the first time you called him to
12:10:35 8 question him, he continued to lie about his
12:10:37 9 whereabouts. Is that correct?

12:10:39 10 A Yes.

12:10:39 11 Q And did you speak to him further about
12:10:44 12 your investigation and what you were uncovering?

12:10:49 13 A I don't recall speaking to him again
12:10:52 14 until I was done doing all of my research.

12:10:56 15 Q Okay. And that was before the warning
12:11:03 16 letters were issued, correct?

12:11:05 17 A What was before?

12:11:06 18 Q When you spoke to him again.

12:11:08 19 A I believe so.

12:11:09 20 Q And was this a telephone call or an
12:11:12 21 in-person meeting?

12:11:13 22 A That was in person.

12:11:15 23 Q Where do you work out of? I mean, in
12:11:18 24 terms of home base.

12:11:20 25 A I live in Florida.

1 ANDERSON

14:18:10 2 MS. GOODMAN: No.

14:18:11 3 MR. SINGER: So go ahead. I won't
14:18:13 4 even try to clarify it.

14:18:18 5 Q Well, I don't think you know what
14:18:19 6 documents went into this report, do you?

14:18:24 7 Anderson-2, do you know what was used
14:18:26 8 to generate Anderson-2?

14:18:27 9 A Yes, you asked -- that was the first
14:18:29 10 question you asked me.

14:18:30 11 Q What document was used to generate --

14:18:33 12 A The year-to-year comparison is used to
14:18:35 13 generate this year-to-date sales numbers.

14:18:38 14 Q So that's the year -- now, what the --
14:18:42 15 is there a possibility that the year-to-date
14:18:46 16 sales report, which is a permanent document, can
14:18:51 17 differ from Anderson-2?

14:18:54 18 A Yes.

14:18:54 19 Q Okay. How does that happen?

14:18:58 20 A That's what I explained.

14:19:01 21 Q Okay.

14:19:02 22 A With a ter -- if in 2011 -- oh, here is
14:19:08 23 a perfect example. In 2010 you can see I had a
14:19:12 24 region. We talked about that, right?

14:19:14 25 Q Yes.

1 ANDERSON

14:51:29 2 Q Ah, okay. How did you make -- I mean,
14:51:33 3 what tools did you use to develop this document?

14:51:37 4 A Um, the call report, ah, reporting
14:51:43 5 data, the year-to-year comparison, and the
14:51:46 6 others are our formula.

14:51:49 7 Q Okay. What do you mean "formula"?

14:51:54 8 A Formula, you calculate a percentage,
14:51:57 9 you divide to get average price.

14:52:00 10 Q I see.

14:52:01 11 So you did the analysis of the average
14:52:05 12 price, the 2001 versus 2010 performance,
14:52:11 13 correct?

14:52:13 14 A I don't know if I did that particular
14:52:14 15 analysis. I certainly plugged it into the
14:52:17 16 chart.

14:52:17 17 Q What is this used for, this chart,
14:52:21 18 Anderson-13?

14:52:23 19 A This was used in the sales meeting.

14:52:25 20 Q And when was that held?

14:52:27 21 A January or February of 2011.

14:52:31 22 Q So at the beginning -- so this is
14:52:34 23 for 2010. Does this reflect 2010 or 2011?

14:52:36 24 A Sorry, sorry. Yes, it would be --
14:52:39 25 would have been a sale meeting in 2012, January

1

ANDERSON

15:25:10 2 Q Okay.

15:25:10 3 A That's a cumulative number.

15:25:12 4 Q Okay.

15:25:12 5 A I believe he received four weeks

15:25:15 6 vacation, so he had taken three days. So he

15:25:18 7 hasn't taken much, according to this, if all was

15:25:23 8 reported.

15:25:23 9 Q Does that show a lack of drive, the

15:25:25 10 fact that he was wasn't taking -- he was working

15:25:29 11 and did not take anywhere near his vacation?

15:25:32 12 Does it show a lack of drive?

15:25:34 13 A It doesn't show any bearing on drive to

15:25:38 14 me at all.

15:25:38 15 Q So you don't think the fact that

15:25:43 16 somebody foregoes taking their vacation in order

15:25:47 17 to work has anything to do with having a proper

15:25:51 18 commitment to their job?

15:25:52 19 A I do not.

15:25:59 20 Q What is the Sully award?

15:26:10 21 A Gosh, I hadn't thought about that in

15:26:15 22 years. I don't remember what it was for.

15:26:17 23 Q Did you ever win a Sully award?

15:26:20 24 A No.

15:26:20 25 Q It was for sales performance?

1 ANDERSON

15:26:22 2 A It was a goofy award that we had at a
15:26:26 3 sales meeting, I think one year only.

15:26:29 4 Q Okay.

15:26:29 5 A And I think it referred to, and I don't
15:26:33 6 remember exactly, but it was who had their head
15:26:37 7 highest above water, meaning who beat last year
15:26:40 8 by the biggest percentage, is what I think that
15:26:43 9 it meant. And it was based on the Captain Sully
15:26:47 10 that landed the plane and who kept it above
15:26:50 11 water.

15:26:50 12 Q So the person who won the Sully award,
15:26:56 13 to your recollection, is person who had the
15:26:57 14 biggest increase of sales year-to-year?

15:27:00 15 A I believe so.

15:27:00 16 Q And isn't it true that Mr. Cargian won
15:27:06 17 the Sully award in 2011?

15:27:12 18 A I don't recall.

15:27:18 19 MS. GOODMAN: This is 17.

15:27:21 20 (Black and white photograph
15:27:21 21 photocopy was marked Exhibit
15:27:40 22 Anderson-17 for identification.)

15:27:40 23 Q Okay.

15:27:40 24 A So no, to answer your question.

15:27:42 25 Q What?

1

ANDERSON

15:27:44 2 A You said 2011. It says 2009.

15:27:46 3 Q 2009. I meant 2009. Thank you.

15:27:49 4 Now, that's Mr. Cargian in the middle,

15:27:56 5 receiving the Sully award, correct?

15:27:59 6 A Yes.

15:27:59 7 Q And who is that standing to his right?

15:28:02 8 A Marie.

15:28:03 9 Q Who?

15:28:03 10 A Marie.

15:28:05 11 Q Marie who?

15:28:06 12 A Bodman.

15:28:07 13 Q And she is?

15:28:09 14 A The former president.

15:28:10 15 Q Was she president in 2009?

15:28:15 16 A Yes.

15:28:15 17 Q And who is that standing to

15:28:17 18 Mr. Cargian's left?

15:28:18 19 A Me.

15:28:18 20 Q So you were there when he was awarded

15:28:21 21 the Sully award, correct?

15:28:23 22 A I was.

15:28:32 23 Q I know you seem to not think much of

15:28:35 24 the award that the company was giving out, but

15:28:38 25 does the fact --

1

ANDERSON

17:01:34 2

MS. GOODMAN: Of the budget, okay.

17:01:36 3

MR. SINGER: And their base

17:01:38 4

salaries, I believe, is accurate as

17:01:40 5

well.

17:01:41 6

Q Okay. You're familiar with the

17:01:42 7

marketing trip to Crewe, England, are you not?

17:01:46 8

A I am.

17:01:47 9

Q When was it held?

17:01:49 10

A Summer of 2013.

17:01:51 11

Q And it was a fairly prestigious event,

17:01:57 12

was it not?

17:01:58 13

A Ah, no.

17:02:02 14

Q Well, describe what it was.

17:02:04 15

A It was an event that we took jewelers

17:02:08 16

on. We went to the Bentley factory to tour it.

17:02:11 17

Q And were they wined and dined?

17:02:13 18

A They were -- we fed them.

17:02:15 19

Q Okay. Where did you feed them?

17:02:17 20

A At local restaurants.

17:02:19 21

Q Well, I assume you made this big trip

17:02:25 22

to Crewe, England, to take them to the Bentley

17:02:29 23

factory to impress your better clients,

17:02:31 24

customers --

17:02:32 25

MR. SINGER: Objection.

1

ANDERSON

17:02:33 2

Q -- is that correct?

17:02:34 3

MR. SINGER: Objection to the form.

17:02:35 4

You can answer.

17:02:35 5

A Yes.

17:02:35 6

Q And you wanted to do everything

17:02:37 7

possible to make this a luxurious event, no?

17:02:44 8

A Yes.

17:02:45 9

Q And you took your best -- and your

17:02:52 10

reason was that you were hoping this would help

17:02:55 11

future business?

17:02:56 12

A Yes.

17:02:57 13

Q I assume you didn't take people to

17:02:59 14

diners to eat?

17:03:01 15

A Correct.

17:03:01 16

Q I'm mystified as to why you don't want

17:03:05 17

to say that this was a luxurious event so you

17:03:07 18

can impress your clients. You may answer.

17:03:11 19

MR. SINGER: There wasn't a

17:03:12 20

question. You don't have to answer.

17:03:14 21

Q Why don't you want to say that?

17:03:16 22

MR. SINGER: I'm going to object to

17:03:17 23

it. Don't answer that. It's

17:03:17 24

argumentative and not a proper

17:03:19 25

question. Why doesn't he say he

1

ANDERSON

17:04:21 2 you recommended?

17:04:25 3 A They, of course, had to carry the
17:04:28 4 product, Bentley product. And I looked at it
17:04:32 5 from where we had the most potential possibly to
17:04:36 6 grow the business.

17:04:37 7 Q And who, besides you and Mr. Prissert,
17:04:39 8 participated in deciding which sales reps would
17:04:44 9 be invited?

17:04:45 10 MR. SINGER: Objection; foundation.

17:04:48 11 You can answer.

17:04:49 12 A I don't think anyone.

17:04:56 13 Q Did you propose the people -- the sales
17:04:59 14 reps that should be invited?

17:05:00 15 A Not that I recall.

17:05:01 16 Q Did anybody besides Mr. Prissert make a
17:05:05 17 proposal as to which sales reps should be
17:05:07 18 invited?

17:05:08 19 A I'm sorry?

17:05:09 20 Q Did anybody besides Mr. Prissert make
17:05:12 21 recommendations as to which sales reps should be
17:05:15 22 included?

17:05:16 23 A No.

17:05:16 24 Q Ms. Sommer was not invited, was she?

17:05:26 25 A No.

1

ANDERSON

17:05:26 2 Q Ms. Haddad was not invited, was she?

17:05:31 3 A No.

17:05:31 4 Q Why was Ms. Sommer not invited?

17:05:35 5 A Because we took the members of the

17:05:37 6 sales team where we thought we -- that had

17:05:40 7 greatest impact of improving the Bentley

17:05:43 8 business.

17:05:43 9 Q Why was Ms. Sommers's area not included

17:05:51 10 in that, where Bentley product could be

17:05:54 11 enhanced?

17:05:56 12 A I don't understand what you're asking.

17:05:57 13 Q Well, what about Ms. Sommer's territory

17:06:03 14 said that we don't have much room to sell

17:06:07 15 Bentley in this territory?

17:06:09 16 A What about her territory said that?

17:06:12 17 Q Yes.

17:06:15 18 A Um. In sales you make an assessment of

17:06:18 19 the potential and you go where you have the

17:06:20 20 most.

17:06:20 21 Q Well, what about her territory said

17:06:23 22 that there wasn't a potential for selling more

17:06:26 23 Bentley?

17:06:26 24 A There wasn't. It just wasn't as high

17:06:30 25 as the others, so we chose the others.

1 ANDERSON

17:15:30 2 MR. SINGER: You can answer.

17:15:35 3 A It appears expressing his desire that
17:15:41 4 he would have wanted to attend.

17:15:43 5 Q Okay. Okay. If you look at the third
17:15:54 6 page down, that's --

17:15:56 7 A This one (indicating), third one back?

17:16:00 8 Q No, down from the top, 000 --

17:16:04 9 A You said third page.

17:16:06 10 Q Third page down.

17:16:07 11 A 399?

17:16:09 12 Q Yes.

17:16:09 13 A Okay, I have 399.

17:16:11 14 Q Okay. Now, you sent an e-mail --

17:16:15 15 A Um-hmm.

17:16:16 16 Q -- to the Z-Sales Reps. That's all of
17:16:19 17 the sales reps, correct?

17:16:20 18 A Yes.

17:16:21 19 Q With carbons to Katie Adams, Lisa
17:16:26 20 Roman, Prissert, and Melissa Vessely, correct?

17:16:30 21 A Correct.

17:16:30 22 Q And it's about the Crewe invite list,
17:16:33 23 right?

17:16:33 24 A Correct.

17:16:33 25 Q Dated April 16, 2013, right?

1

ANDERSON

17:16:37 2 A Yes.

17:16:37 3 Q You said you, "...focused on the stores
17:16:43 4 with corners (present and future) and champion
17:16:48 5 doors." What are champion doors?

17:16:51 6 A Stores where we have an employee that
17:16:54 7 is dedicated to our brand, and we have a bonus
17:16:57 8 structure for goals of theirs.

17:17:00 9 Q You mean you put -- Breitling puts a
17:17:04 10 sales rep -- a sales associate in?

17:17:07 11 A No.

17:17:08 12 Q What do you mean?

17:17:11 13 A They're a store employee.

17:17:12 14 Q They're a store employee.

17:17:14 15 But you pay them? Breitling pays them?

17:17:16 16 A We set goals and give them a bonus
17:17:20 17 structure.

17:17:20 18 Q Um-hmm. Okay. You set goals for that
17:17:25 19 sales associate in -- an employee of the retail
17:17:30 20 establishment, correct?

17:17:31 21 A We -- you said we set goals for
17:17:36 22 employees at the retailer, right?

17:17:38 23 Q Yes.

17:17:39 24 A Yes, we do.

17:17:39 25 Q And do you pay them a bonus if they

1

ANDERSON

17:17:42 2 meet their goals?

17:17:43 3 A Yes.

17:17:44 4 Q Are any of the stores that -- if you
17:17:52 5 look at 6, 7, and 8, Mr. Cargian's clients, were
17:18:04 6 any of those stores a champion store?

17:18:08 7 A Just one.

17:18:08 8 Q Which one?

17:18:09 9 A Number 7.

17:18:11 10 Q So these are stores, I assume, because
17:18:14 11 you're setting goals you must have, you know, a
17:18:18 12 lot of faith in them, correct?

17:18:20 13 A If we have a champion you're saying?

17:18:23 14 Q Yes.

17:18:23 15 A Um, yes, if we put a champion in the
17:18:27 16 store, we believe we can improve.

17:18:31 17 Q So you believe those are stores with
17:18:35 18 pretty good potential, correct?

17:18:36 19 A These?

17:18:38 20 Q Yes, the ones that have champions. The
17:18:42 21 champion stores.

17:18:43 22 A Yes, champion stores do.

17:18:45 23 Q What other stores that are on this list
17:18:47 24 of invitees are champion stores?

17:18:51 25 A The first one, the third one, the

1 ANDERSON

17:42:57 2 questioned about one of them at his own
17:43:00 3 deposition. But we'll take any
17:43:02 4 requests under advisement.

17:43:04 5 Q Who first proposed promoting Isaac
17:43:08 6 Schafrath to be a sales rep?

17:43:09 7 A Mr. Prissert.

17:43:11 8 Q And when did he first -- did you raise
17:43:13 9 it with him at all, the issue -- or the proposal
17:43:17 10 with him, at all?

17:43:18 11 A Did I raise the proposal?

17:43:20 12 Q At all with him.

17:43:22 13 A No.

17:43:28 14 Q And when was the first time you recall
17:43:30 15 him raising with you that he decided to promote
17:43:34 16 Mr. Schafrath?

17:43:35 17 A Probably late 2012.

17:43:38 18 Q Okay. And was this an in-person
17:43:42 19 meeting or by phone by e-mail?

17:43:46 20 A I don't recall.

17:43:46 21 Q How often would you and Mr. Prissert
17:43:48 22 meet together to go over business matters?

17:43:53 23 A It varies. I come to New York quite a
17:43:58 24 bit, but it varies.

17:44:00 25 Q How often?

1

ANDERSON

17:45:10 2

MS. GOODMAN: We ask for any text

17:45:12 3

messages relating to Fred Cargian

17:45:15 4

between Mr. Prissert and Mr. Anderson.

17:45:23 5

Q Do you have any text messages relating

17:45:27 6

to any other of the sales reps?

17:45:30 7

MR. SINGER: Can you be more

17:45:31 8

specific, Counsel, when you say

17:45:34 9

"relating to"?

17:45:34 10

Q Yes. In any way relating to their

17:45:38 11

work.

17:45:38 12

A No, we don't discuss business over text

17:45:41 13

to that degree.

17:45:42 14

Q So what do you text?

17:45:43 15

A Give me a call, you know...

17:45:50 16

Q When Mr. Prissert first suggested to

17:45:53 17

you the promotion of Isaac Schafrath, what was

17:46:01 18

your response?

17:46:13 19

A That I thought he would take quite a

17:46:15 20

bit of work to get up to speed.

17:46:18 21

Q Isn't it true that you did not think it

17:46:20 22

was a particularly good idea to put an

17:46:23 23

inexperienced young man in charge of the

17:46:27 24

northeast territories?

17:46:28 25

A I don't recall making that statement.

1

ANDERSON

17:46:30 2 Q I'm not asking if you made that exact
17:46:33 3 statement. I'm saying, did you think it was a
17:46:36 4 good idea to put an inexperienced young man in
17:46:39 5 charge of the northeast territories?

17:46:42 6 MR. SINGER: Objection to the form.
17:46:42 7 You can answer.

17:46:43 8 A I don't believe I had that line of
17:46:46 9 thinking.

17:46:47 10 Q Today, what do you think? Do you think
17:46:48 11 it was a good idea to put an inexperienced young
17:46:51 12 man in charge of the northeast territories?

17:46:54 13 A No, I do not.

17:46:56 14 Q And at that time, what would you have
17:46:58 15 thought, that here you are, the sales manager,
17:47:00 16 and you have to worry about production, and you
17:47:03 17 are being told by your boss that they want to
17:47:05 18 put an inexperienced young man in charge of the
17:47:08 19 sales in northeast territory? Did you think
17:47:11 20 that was a good idea?

17:47:12 21 MR. SINGER: Objection to form and
17:47:13 22 the characterization. You can answer.

17:47:14 23 A I didn't think of it in that sense.

17:47:17 24 Q What sense did you think of it in?

17:47:20 25 A That it's going to take some time to

1

ANDERSON

17:47:24 2 get the kid up to speed, but we'll give him a
17:47:28 3 chance.

17:47:28 4 Q Would you have preferred to do
17:47:29 5 that -- would you have preferred not to have
17:47:30 6 been given an employee that you had to, quote,
17:47:34 7 bring up to speed?

17:47:36 8 A Knowing what I know today, yes.

17:47:39 9 Q Even then, would you have preferred not
17:47:42 10 to have to bring an inexperienced person up to
17:47:45 11 speed in a fairly important territory?

17:47:48 12 A No.

17:47:48 13 Q You didn't think it was a good idea?

17:47:54 14 A You asked me --

17:47:56 15 THE WITNESS: What was her
17:47:56 16 question?

17:47:57 17 (The last question was read back by
17:48:19 18 the court reporter.)

17:48:19 19 A No, I didn't think it was a good idea.

17:48:22 20 Q Did you express that to Mr. Prissert?

17:48:32 21 A I think the double negative is
17:48:36 22 confusing people here.

17:48:37 23 I was willing to take the challenge of
17:48:40 24 Isaac being a sales rep.

17:48:41 25 Q I understand you were willing. Your

A-513

EXHIBIT 14

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X
FREDERICK M. CARGIAN,

Plaintiff,

-against-

BREITLING USA,

Defendant.

-----X

350 West 31st Street
New York, New York

July 23, 2015
10:13 a.m.

DEPOSITION of ISAAC SCHAFRATH,
pursuant to Notice, taken by and before
Elizabeth Santamaria, a Notary Public and
Shorthand Reporter within and for the State
of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 110425

1 SCHAFRATH

2 A. No.

3 Q. Have you ever sued or been sued?

4 A. No.

5 Q. Easy questions.

6 Your date of birth is 6/26/79?

7 A. Yes.

8 Q. And you are married?

9 A. Yes.

10 Q. And you have children?

11 A. Yes.

12 Q. How many?

13 A. I have one with a previous
14 relationship.

15 Q. And as I understand, you were born
16 and raised in Wilton, Connecticut?

17 A. No.

18 Q. I'm sorry. Where were you born and
19 raised?

20 A. I was born in Cleveland, Ohio and
21 lived there for a number of years until my
22 parents got divorced and then I moved to
23 Connecticut.

24 Q. And you moved to Wilton,
25 Connecticut?

1 SCHAFRATH

2 lot of schools. I don't remember.

3 Q. I ask that question because I know
4 your father attended OSU so I thought it would
5 be natural you would apply there.

6 A. It was an inexpensive choice.

7 Q. Butler was the inexpensive?

8 A. No.

9 Q. Oh, OSU.

10 A. Yes.

11 Q. How did it come about that you
12 started at Butler, you went to Butler?

13 A. Lacrosse.

14 Q. Did they offer you a lacrosse
15 scholarship?

16 A. Yes.

17 Q. It was a fully paid scholarship?

18 A. No.

19 Q. And you left Butler in 2002; is
20 that correct?

21 A. Somewhere in that area, yes.

22 Q. And was that at the end of the
23 semester, in the mid-semester?

24 A. I believe it was mid-semester.

25 Q. So you went from September until

1 SCHAFRATH

2 Q. Were you matriculating at OSU?

3 A. I'm not sure.

4 Q. Do you know what "matriculating"
5 means?

6 A. I don't.

7 Q. Were you taking courses for credits
8 so that you could ultimately graduate?

9 A. Yes, correct.

10 Q. Were you attending course classes
11 while you were a football video manager?

12 A. Yes.

13 Q. What courses were you taking?

14 A. I don't remember. The only one I
15 remember is German.

16 Q. How many courses -- how many
17 credits did you accumulate while at OSU?

18 A. Maybe 15.

19 Q. Were you a full-time student?

20 A. Yes.

21 Q. When did -- you started in the fall
22 of 2003, is it?

23 A. Maybe. I really don't remember. I
24 have no idea. I would have to relook at it.

25 Q. Did you leave after one semester or

1 SCHAFRATH

2 after two semesters?

3 A. I left after two semesters.

4 Q. So you left the following spring,
5 at the conclusion?

6 A. Yes.

7 Q. Why did you leave?

8 A. I was -- I started working and my
9 girlfriend at the time got pregnant so I
10 wanted to work full-time.

11 Q. Were you asked to leave?

12 A. No.

13 Q. During your attendance at Butler
14 and OSU, any courses that you ever failed?

15 A. Maybe. I don't remember.

16 Q. What courses might you have failed?

17 A. I have no idea. I honestly don't
18 know.

19 Q. Now, you were hired by Breitling in
20 April of 2006; is that correct?

21 A. That's correct.

22 Q. Between your leaving OSU in about
23 the spring of 2004 and April 2006 you had held
24 several positions; is that correct?

25 A. Several jobs outside of --

1 SCHAFRATH

2 (Record read.)

3 Q. Did you ever sell any Breitling
4 products while you were a vault manager?

5 A. No.

6 Q. As a vault -- while you were vault
7 manager, did you ever make any visits to
8 clients or customers?

9 A. Yes.

10 Q. And what was the purpose of the
11 visits that you would make?

12 A. I had -- I dropped watches off a
13 few times and I actually went on a job with
14 Chuck Anderson and Josh Haley to North
15 Carolina and visited I believe five stores.

16 Q. And when was that?

17 A. Summer of 2012.

18 Q. Why were you asked to go on this
19 trip with Chuck Anderson and Josh Haley?

20 MR. SINGER: Objection.

21 You can answer.

22 A. I don't know.

23 Q. Did they tell you what the reason
24 for bringing you on that trip was?

25 A. No.

1 SCHAFRATH

2 Q. What role did you play on that
3 trip?

4 A. Just met people and talked with
5 them and watched the process.

6 Q. Watched what process, the selling
7 process?

8 A. Just the whole visit experience,
9 visiting the store.

10 Q. Were you surprised-- withdrawn.
11 Who came to you in 2012 and
12 suggested that you make this trip to North
13 Carolina?

14 A. I don't remember.

15 Q. Was it Chuck Anderson?

16 A. Probably, but I don't remember.

17 Q. Do you have any notes or any
18 correspondence about making this trip?

19 A. No.

20 Q. How long was this trip?

21 A. Around four days.

22 Q. And when was it?

23 A. I think I said summer 2012.

24 RQ MS. GOODMAN: I would like any
25 documents relating to the trip that has

1 SCHAFRATH

2 Those are the only things I have
3 ever really talked to him about at the table.

4 Q. Were you aware of the fact that he
5 was interested in gambling?

6 MR. SINGER: Objection. Assumes
7 facts.

8 You can answer.

9 A. To what extent? I mean I've heard
10 him bet on things, yes.

11 Q. And where did you hear him bet on
12 things?

13 A. Mainly on the road when we were all
14 like in Basel or when we are all together.

15 Q. Was this while you were vault
16 manager?

17 A. No.

18 Q. So this is later?

19 A. Yes.

20 Q. Did he bet on sporting events?

21 A. Yes, I believe. Yes.

22 Q. He was a big sports fan, wasn't he?

23 A. He seems to be.

24 Q. When you say "seems to be," what
25 indications did you have if he seems to be?

1 SCHAFRATH

2 A. He does talk about golf a lot and
3 football a lot.

4 Q. And what?

5 A. Football.

6 Q. Anything else?

7 A. Soccer.

8 Q. Anything else?

9 A. I believe I have heard him talk
10 about tennis. I don't think we talked about
11 baseball.

12 Q. Where would you hear these
13 conversations where he talked about sports,
14 football, soccer, whatever it might be?

15 A. Mainly at the lunch table or when
16 we were all together in Basel those couple of
17 times.

18 Q. You said Wilton has small quarters,
19 intimate quarters, correct?

20 A. Correct.

21 Q. So would you from time to time
22 observe some of the sales reps while you were
23 vault manager congregating in Mr. Prissert's
24 office discussing sports and gambling and
25 other such things?

1 SCHAFRATH

2 A. No.

3 Q. You never saw that?

4 A. The sales reps were rarely ever
5 there. I believe in my six years I saw all
6 the sales reps there maybe five times.

7 Q. And did you ever observe that they
8 congregated in his office?

9 A. Oh, I'm sorry. That was during
10 Marie. I don't remember even seeing them all
11 there when...

12 Q. Let's talk about when you were
13 vault manager. Did you ever go to his office
14 and talk with him about sports and gambling
15 and other such things?

16 MR. SINGER: Objection to the form.

17 A. No.

18 Q. Your father was a or still is a
19 famous football player?

20 A. Correct.

21 Q. Did you ever discuss or did
22 Mr. Prissert ever discuss with you your
23 father?

24 A. Yes.

25 Q. Let's just identify him for the

1 SCHAFRATH

2 record. He was an All Star at OSU, correct?

3 A. I don't know what All Star means.

4 Q. Was he on the college football

5 All Star team?

6 A. I don't believe so.

7 Q. And then he played professionally?

8 A. Correct.

9 Q. For whom did he play?

10 A. The Cleveland Browns.

11 Q. And did -- there's an All Star pro
12 football?

13 A. Yes.

14 Q. He was an All Star pro football?

15 A. Yes.

16 Q. So he's a very prominent sports
17 figure?

18 A. Yes.

19 Q. And you did discuss him with
20 Mr. Prissert?

21 A. Yes.

22 Q. How did that conversation come up?

23 A. I believe someone else brought it
24 up to him.

25 Q. Who was that?

1 SCHAFRATH

2 A. I don't remember, but I know I
3 didn't bring it up to him.

4 Q. You might not have brought it up to
5 him but did every talk with you about it?

6 A. Yes. He asked me about it.

7 Q. What did he ask you?

8 A. Just how long my dad played, who he
9 played for, the same questions you just asked
10 me.

11 Q. Was that on more than one occasion?

12 A. Yes.

13 Q. How often would you say?

14 A. Probably about five times total
15 I've talked to him about it. He brings up
16 other things.

17 Q. Did he ever meet your father?

18 A. No.

19 Q. Did he ever ask to meet you?

20 A. No.

21 Q. Did you ever get any sports
22 paraphernalia for him from your father?

23 A. No.

24 Q. While you were vault manager did
25 you ever meet with Mr. Prissert alone or with

1 SCHAFRATH

2 another reason. So I don't know. Every four
3 months, five months.

4 Q. It seems to be fair to say that you
5 badgered people about wanting this promotion,
6 correct?

7 MR. SINGER: Objection.

8 You can answer.

9 A. I was very persistent about it,
10 yes.

11 Q. But for seven years, from 2006
12 until middle of 2012, you basically had
13 rejections of one. So you were not
14 considered. No opening was given to you,
15 correct?

16 MR. SINGER: Objection.

17 You can answer.

18 A. Correct.

19 Q. At any time did you ever hear --
20 withdrawn.

21 Did you ever have any writings or
22 communication with -- written communication
23 with Mr. Prissert about your desire for
24 promotion to sales?

25 Let me just define it. Lawyers

1 SCHAFRATH

2 for years.

3 Q. But you were called up to a meeting
4 with Amstutz -- withdrawn.

5 Who called you?

6 A. Sebastian did.

7 Q. He is your direct boss?

8 A. Yes.

9 Q. It could have been about some
10 business purpose.

11 A. Yes.

12 Q. Did you have anything that happened
13 in the week or two weeks before that led you
14 to believe this might be a more important
15 meeting?

16 A. I had had an informal conversation
17 or two with Chuck and/or Thierry just saying
18 that they were hoping they might be able to
19 find a place for me.

20 Q. When was this informal meeting?

21 A. It was either -- I think they had
22 mentioned it once over the phone and once
23 about probably in late October.

24 Q. So would you say you had some
25 conversation over the phone where you were

1 SCHAFRATH

2 A. I think it was between two and
3 three.

4 Q. And were any conversations held in
5 this three-week period or two- to three-week
6 period with Thierry about this potential
7 promotion or the potential opening?

8 A. Not that I remember.

9 Q. Were there any phone conversations
10 between you and Chuck about your phone
11 conversation?

12 A. Not that I remember.

13 Q. Were there any conversations in
14 this two- to three-week period between you and
15 Sebastian about the conversation you had with
16 Chuck and Thierry?

17 A. No.

18 Q. Let's get to the meeting that was
19 held sometime early November. Tell me
20 everything you recall being said by Thierry.

21 A. About?

22 Q. Anything you recall.

23 A. "Hello"?

24 Q. After "hello," anything you recall
25 being said.

1 SCHAFRATH

2 A. I believe he had said that they had
3 considered a few people for a new sales rep
4 position and they would like to discuss it
5 with me to see my stance on it.

6 Q. Did they have any question or what
7 your --

8 A. Yes.

9 Q. Well, what did they -- what was the
10 question they had about what your position
11 was?

12 I'm sorry. I shouldn't have
13 interrupted you. Go ahead.

14 A. What my position was?

15 Q. Yes.

16 A. I mean they were -- just wanted to
17 talk to me about the actual job and discuss
18 with me if I felt like I could do it. And we
19 went over the actual duties of it and the
20 day-to-day lifestyle of it.

21 Q. I want to get back to my original
22 question. What did Thierry say at that
23 meeting?

24 A. I don't know his exact words.

25 Q. Paraphrase, general.

1 SCHAFRATH

2 A. I'm paraphrasing.

3 Q. So he is the one who spoke?

4 A. Yes.

5 Q. And you said they had, quote,
6 considered several people for a new sales rep
7 position, correct?

8 A. Correct.

9 Q. But you said they wanted to know
10 what your position was?

11 A. Correct. They said I was the one
12 person in the company that they were looking
13 at.

14 Q. So they were not looking at anybody
15 else?

16 A. Inside the company, no.

17 Q. Was there any sort of posted notice
18 or advertisement for the position?

19 A. No.

20 Q. Do you know who else they were
21 considering?

22 A. No.

23 Q. What did -- you said that they went
24 over, quote, the job that they were proposing.

25 A. Yes.

1 SCHAFRATH

2 Q. Well, what else do you recall them
3 asking?

4 A. That's all I recall him asking.

5 Q. What did you answer to that?

6 A. Again, I said I know the product
7 very well. I believe I have good personal
8 people skills. I think I am intelligent. I
9 think I am hard worker.

10 Q. Did you ask him whether you had any
11 sales experience before?

12 A. No, I actually told him I don't
13 have sales experience.

14 Q. You offered that but he never
15 asked?

16 A. Correct. That was my trepidation
17 of the job itself.

18 Q. What questions did Mr. Anderson ask
19 you?

20 A. Some of the same. I don't think he
21 spoke as much as Thierry did but these
22 questions, I don't remember exactly who asked
23 all of them. I just remember it was a more
24 flowing experience.

25 Q. When you told Mr. Prissert that you

1 SCHAFRATH

2 did not have any sales experience, what did he
3 say?

4 A. He said he knows me well enough now
5 and he has faith that I could do it well.

6 Q. How did he know you well enough at
7 that point?

8 MR. SINGER: Objection.

9 You can answer.

10 A. Just from being around the office
11 and doing business with him.

12 Q. So what he knew was your ability to
13 do your vault manager job; is that correct?

14 A. I would say, yes.

15 Q. And the conversations you had at
16 the lunchroom, which was about sports and
17 television and social things, correct?

18 A. Yes.

19 Q. And he knew your father was a
20 football hero, correct?

21 MR. SINGER: Objection.

22 Q. A well known football --

23 MR. SINGER: Counselor, these are
24 all asked and answered.

25 Q. Is that correct?

1 SCHAFRATH

2 A. Yes.

3 Q. Did they ask you anything about
4 your ability to travel in light of family
5 responsibilities?

6 A. Yes.

7 Q. What did you say?

8 A. I said I have no problem traveling.

9 Q. At that point where was your
10 family, your child?

11 A. Denver.

12 Q. Were you married at that time?

13 A. No.

14 Q. Did you ever find out who else
15 was -- withdrawn.

16 You said that Thierry Prissert said
17 he had no doubt you could do a good job; is
18 that correct?

19 A. Yes.

20 Q. And he said that at this meeting;
21 is that correct?

22 A. Yes.

23 Q. Did you ever find out who the other
24 applicants were for the job?

25 A. No.

1 SCHAFRATH

2 Q. What was the next communication you
3 had from anybody at Breitling, that you had
4 from them after the November meeting?

5 A. About what?

6 Q. About your possible promotion.

7 A. I believe it was another meeting.

8 Q. When was that?

9 A. The end of November-ish.

10 Q. Did you have any communication with
11 Mr. Prissert regarding this potential
12 promotion between the early meeting in late
13 November and the later meeting at the end of
14 November?

15 A. Nothing that I remember.

16 Q. Did you have any communication with
17 Mr. Anderson about the possible promotion
18 between the early meeting in the beginning and
19 the ending meeting in November?

20 A. I believe I might have had a phone
21 call with him.

22 Q. What was that? Tell me everything
23 you recall about that phone call.

24 A. It wasn't a long one. It was just
25 talking about the position offered and he was

1 SCHAFRATH

2 telling me how hard it was and just kind of
3 asking me if he thinks I could handle it.
4 That type of stuff.

5 Q. Asking you if you could handle it?

6 A. Correct, yes.

7 Q. You just said that the position you
8 were offered.

9 A. I hadn't been offered it yet.

10 Q. So you are talking about the
11 position that was described?

12 A. Correct.

13 Q. How long was this telephone
14 conversation?

15 A. It wasn't very long.

16 Q. How about with Mr. Amstutz? Was
17 there any conversation with him between the
18 early November meeting and the later November
19 meeting about this position?

20 A. No.

21 Q. Where -- the meeting that was held,
22 the next meeting that was held, which was the
23 end of November, where was that held?

24 A. Again, at the office. I believe,
25 again, in Mr. Amstutz's office.

1 SCHAFRATH

2 Q. How long did that meeting last?

3 A. A little bit shorter, probably
4 around a half hour.

5 Q. And what did Mr. Prissert say at
6 that meeting?

7 A. It's when they were offering the
8 position.

9 Q. And what did he say?

10 A. He said he, you know, they've
11 considered a lot of things and they think that
12 I can do the job well. They said it will take
13 a little bit of time and maybe some training
14 and stuff, but they said -- he said that he
15 believes that I can do it and he would like to
16 offer the position to me.

17 Q. Did Mr. Anderson say anything?

18 A. I believe Sebastian is the one that
19 went over all the goals and the structure. I
20 don't remember Mr. Anderson saying too much.

21 Q. Were you told at this meeting what
22 the territory would be?

23 A. No.

24 Q. What did they offer you? What did
25 he say, "We are offering you"?

1 SCHAFRATH

2 A. A sales rep position, but they said
3 the territory has not been defined yet.

4 Q. It made no difference to you
5 whether that territory was in California or
6 New York; is that correct?

7 A. At that time it did not, no.

8 Q. Did they ask you that?

9 A. No. I think I said is it going to
10 be far away and they said they don't believe
11 so, but it might. They may have said, "Is
12 that a problem to move away?" and I said,
13 "No."

14 Q. When you said Mr. Amstutz went over
15 the goals and structure --

16 Is that what you said?

17 A. Yes.

18 Q. Let's go first to the goals. What
19 did he say about goals?

20 A. There are a whole list of goals
21 that we had to reach.

22 Q. What did he say specifically?

23 A. I would have to have a list of
24 goals in front of me.

25 Q. Did they give you some piece of

1 SCHAFRATH

2 Q. So it wasn't specific to a
3 territory or what you were expected to
4 perform?

5 A. Correct.

6 Q. You also said that they talked
7 about the structure. What did you mean when
8 you talk about the structure?

9 A. The payment structure.

10 Q. Your salary?

11 A. Correct.

12 Q. Did they tell you what your salary
13 would be?

14 A. Yes, I believe so.

15 Q. And what did they say your salary
16 would be?

17 A. I believe it was 100 and -- I don't
18 remember, actually. I remember my second
19 salary offer. I don't remember the first one.
20 It might have been 90. I don't remember.

21 Q. What do you mean the second?

22 A. Well, because I got a raise after
23 the first year. The first year --

24 Q. Wasn't the salary that you were
25 offered \$85,000?

1 SCHAFRATH

2 A. Okay. Maybe that's what it is.

3 MR. SINGER: Don't guess.

4 A. I don't remember.

5 Q. And what were you making as vault
6 manager?

7 A. I believe 70.

8 Q. Isn't it true you were making
9 59,000, close to 60,000?

10 A. Okay. I think I was adding my
11 bonus in there.

12 Q. And your bonus was close to 5,000?

13 A. Okay, sure.

14 MS. GOODMAN: Mark this as
15 Schafrath Exhibit 4.

16 (Schafrath Exhibit 4, one-page
17 document bearing Bates No. Breitling_635,
18 marked for identification.)

19 Q. I'm showing you what has now been
20 marked as Schafrath Exhibit 4 which is a
21 one-page document marked "confidential" that
22 was turned over to us by Breitling. It is
23 Breitling 635. I know it's very hard to see.
24 I know. Speak to the Breitling people about
25 it.

1 SCHAFRATH

2 family your concern that, you know, "Here it
3 is the 23rd hour, I still don't know where I'm
4 going to be"?

5 A. Yes, but I was also excited about
6 it.

7 Q. Did you express --
8 Now, you tell me you expressed to
9 Sebastian, to Chuck and to Thierry your
10 concern about you would like to know, right?

11 A. Yes.

12 Q. You need to know because you had a
13 family, correct?

14 A. Yes.

15 Q. You had a lease. Did you tell
16 them, "I have a lease I to do something
17 about"?

18 A. They said they would take care of
19 it, whatever needed to be done.

20 Q. So, in other words, they would
21 pay that you --

22 A. I have no idea what they mean by
23 their words.

24 Q. And when did they finally tell you
25 what your territory would be?

1 SCHAFRATH

2 A. I believe it was the first week in
3 January.

4 Q. So you started to work?

5 A. Well, I was at the office training
6 for a couple of weeks.

7 Q. And who -- did you have a meeting,
8 a sitdown meeting where you got -- were told?

9 A. I'm not sure if it was a sitdown
10 meeting or, you know, we just kind of
11 discussed it while they were training me for
12 other things and --

13 Q. Who is the "we"?

14 A. Chuck Anderson was there, I know
15 that for sure.

16 Q. Was Thierry there?

17 A. I don't remember. I'm sure he
18 was --

19 Q. Was Sebastian there?

20 A. No, I don't think so.

21 Q. So it was either Chuck and Thierry
22 or just Chuck?

23 A. Well, Chuck then was my direct boss
24 when that started, so at least for a couple of
25 weeks I was with him daily. So we went over

1 SCHAFRATH

2 there was a problem and I don't believe I had
3 a problem in 2013.

4 Q. So you don't believe that not
5 getting -- if you don't get your call report
6 in on time, that's not a problem?

7 A. I don't think I -- I think I got my
8 reports in almost always on time.

9 Q. But not always?

10 A. I don't remember a time that I
11 didn't but I'm sure there was at least once,
12 okay.

13 Q. And that was in 2013?

14 A. I probably was -- yes, once.

15 Q. And in 2014 was that more of a
16 problem?

17 A. Yes, it was a problem in 2014.

18 Q. How often did you not get your
19 reports in on time?

20 A. I don't remember.

21 Q. Was it sort of regularly that you
22 did not get them in on time?

23 A. I don't believe so.

24 MS. GOODMAN: Please mark

25 Exhibit 11.

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SCHAFRATH

(Schafrath Exhibit 11, one-page document bearing Bates No. Breitling_1730, marked for identification.)

Q. I'm showing you what's now been marked as Schafrath 11, Breitling 1730, which is an e-mail from Thierry Prissert to you with a CC to Sebastian Amstutz and Chuck Anderson. Is that the e-mail that you're referring to where he talks about your not responding to e-mails?

A. I believe so, yes.

Q. And did you receive this e-mail?

A. Yes.

Q. And he said that not only it was internal but that clients were complaining that you were not responding to their inquiries and ignoring their calls?

MR. SINGER: Just --

Q. Was that discussed with you?

MR. SINGER: I'm just going to object to the word "complaining." The e-mail says "telling."

But other than that, you can answer.

1 SCHAFRATH

2 A. As I said, it was not only in
3 Breitling but it was also stores.

4 Q. And you don't think when they're
5 telling Chuck that you weren't responding to
6 their inquiries, that they weren't complaining
7 about that?

8 MR. SINGER: Objection to the form.
9 You can answer.

10 A. I have no idea. I have no idea
11 what they were saying. I was never told
12 exactly what they were saying.

13 Q. But would you see that as a
14 complaint? When a client calls and says, "My
15 rep isn't communicating with me," would that
16 be a complaint?

17 A. If that's what was said then, yes,
18 that would be a complaint.

19 Q. Did you --

20 Now, it says, "If you have any
21 explanations or want to discuss your job, we
22 are available to do so." Did you call or go
23 to see Mr. Prissert to talk with him more
24 about this?

25 A. I did not go to see him. As I

1 SCHAFRATH

2 Q. So you go to this meeting in
3 December and who was there?

4 A. Chuck and Thierry.

5 Q. And at that meeting you were told
6 you were not going to be a sales rep anymore?

7 A. Yes.

8 Q. Were you told you were fired?

9 A. They told me that I had two
10 options. They said I could -- I could walk
11 away and they would give me a decent package.

12 Or they said they are trying to
13 create -- they already have a position and
14 they were -- I think they said they had posted
15 it but I'm not 100 percent sure on that, the
16 position they were creating and would like me
17 to stay on and they'll give me a week to let
18 them know if I wanted to stay on and do that
19 position.

20 Q. What was the package that they
21 offered you?

22 A. I believe with how long I had been
23 a sales rep, I was allowed two weeks of pay
24 every month -- sorry -- every year that I had
25 been --

1 SCHAFRATH

2 Q. Now, you said that they offered you
3 another position which you think might have
4 been posted.

5 A. I know they said they were either
6 about to post it or they had just posted it
7 and they said they would give me a week.

8 Q. Did they give you a description, a
9 job description?

10 A. They let me see a job description,
11 but I did not get to keep it.

12 RQ MS. GOODMAN: Can I get a copy of
13 that job description or whatever it is
14 they gave him.

15 Q. What was the title of that job?

16 A. Sales analyst.

17 Q. Was this to be a newly created job?

18 A. Yes.

19 Q. What was this job, as presented to
20 you at this point; what was this job supposed
21 to entail?

22 A. Because of all of the new reporting
23 systems and -- online and that thing that I
24 told you that we were scanning all the
25 inventory and getting the sellout immediately,

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SCHAFRATH

they needed someone to start going through that data because it was increasingly difficult for the sales reps to go through it and for Chuck to go through it. So they needed someone to go through it and figure out trends and come up with, you know, new ways of figuring out sales.

Q. So you were the person who couldn't get reports in on time and they were giving you a job involving doing nothing but analyzing reports?

MR. SINGER: Objection to the form.

It is a mischaracterization.

But you can answer.

A. Very different.

Q. Why did they say that they thought this would be a job -- withdrawn.

Am I right in understanding that it was an open offer to you, it was only up to you? They were offering the job to you if you will accept it?

A. Correct.

Q. Why did they say that they thought you would be good for this job?

EXHIBIT 15

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| | 2012 Jan Total | | | 2011 Jan Total | | | Jan % | | | Feb 2012 Total | | | Feb 2011 Total | | | Feb % | | | Mar 2012 Total | | | Mar 2011 Total | | | Mar % | | | | | | | |
|------------------|----------------|---------------|----|----------------|----|------------|---------------|--------------|---------------|----------------|------------|---------------|----------------|---------------|----|--------------|---------------|------------|----------------|-------|--------------|----------------|------------|---------------|-------|--------------|---------------|------------|---------------|-------|-------|-------|
| red | \$ | 859,092.00 | \$ | 1,125,818.00 | \$ | 481,259.00 | \$ | 1,358,338.00 | | \$ | 883,887.00 | \$ | 1,120,630.00 | | \$ | 1,187,789.00 | \$ | 806,791.00 | | \$ | 1,329,345.00 | \$ | 762,097.00 | | \$ | 1,329,345.00 | \$ | 762,097.00 | | 74% | | |
| single | \$ | 838,996.00 | \$ | 827,879.00 | | \$ | 893,887.00 | \$ | 1,247,951.00 | | \$ | 1,081,959.00 | \$ | 1,247,951.00 | | \$ | 1,256,800.00 | \$ | 1,246,694.00 | | \$ | 1,256,800.00 | \$ | 1,246,694.00 | | \$ | 1,256,800.00 | \$ | 1,246,694.00 | | 1% | |
| oshi | \$ | 1,583,186.00 | \$ | 1,417,775.00 | | \$ | 1,081,959.00 | \$ | 1,247,951.00 | | \$ | 572,888.00 | \$ | 760,638.00 | | \$ | 435,966.00 | \$ | 474,368.00 | | \$ | 435,966.00 | \$ | 474,368.00 | | \$ | 435,966.00 | \$ | 474,368.00 | | 9% | |
| lick | \$ | 601,236.00 | \$ | 567,527.00 | | \$ | 684,135.00 | \$ | 985,923.00 | | \$ | 1,086,702.00 | \$ | 1,202,453.00 | | \$ | 929,952.00 | \$ | 624,723.00 | | \$ | 929,952.00 | \$ | 624,723.00 | | \$ | 929,952.00 | \$ | 624,723.00 | | 49% | |
| flank | \$ | 841,588.00 | \$ | 721,532.00 | | \$ | 1,086,702.00 | \$ | 1,202,453.00 | | \$ | 990,678.00 | \$ | 841,805.00 | | \$ | 519,195.00 | \$ | 605,953.00 | | \$ | 519,195.00 | \$ | 605,953.00 | | \$ | 519,195.00 | \$ | 605,953.00 | | 23% | |
| eps | \$ | 6,375,492.00 | \$ | 6,153,899.00 | | \$ | 5,697,166.00 | \$ | 7,551,573.00 | | \$ | 6,651,982.00 | \$ | 5,247,322.00 | | \$ | 6,451,982.00 | \$ | 5,247,322.00 | | \$ | 6,451,982.00 | \$ | 5,247,322.00 | | \$ | 6,451,982.00 | \$ | 5,247,322.00 | | 23% | |
| USE | \$ | 665,528.00 | \$ | 1,439,959.00 | | \$ | 2,641,681.00 | \$ | 2,177,536.00 | | \$ | 8,338,847.00 | \$ | 9,729,109.00 | | \$ | 7,856,881.00 | \$ | 1,667,880.00 | | \$ | 7,856,881.00 | \$ | 1,667,880.00 | | \$ | 7,856,881.00 | \$ | 1,667,880.00 | | 5% | |
| clais | \$ | 7,041,020.00 | \$ | 7,602,858.00 | | \$ | 8,338,847.00 | \$ | 9,729,109.00 | | \$ | 7,237,653.00 | \$ | 6,915,182.00 | | \$ | 7,237,653.00 | \$ | 6,915,182.00 | | \$ | 7,237,653.00 | \$ | 6,915,182.00 | | \$ | 7,237,653.00 | \$ | 6,915,182.00 | | 5% | |
| April 2012 Total | \$ | 1,069,191.00 | \$ | 1,123,396.00 | | \$ | 1,418,476.00 | \$ | 1,126,761.00 | | \$ | 1,273,382.00 | \$ | 792,056.00 | | \$ | 1,273,382.00 | \$ | 948,665.00 | | \$ | 1,356,057.00 | \$ | 831,916.00 | | \$ | 1,356,057.00 | \$ | 831,916.00 | | 44% | |
| July 2012 Total | \$ | 990,752.00 | \$ | 1,582,075.00 | | \$ | 804,419.00 | \$ | 692,944.00 | | \$ | 1,052,081.00 | \$ | 1,405,894.00 | | \$ | 1,079,497.00 | \$ | 1,118,553.00 | | \$ | 1,079,497.00 | \$ | 1,118,553.00 | | \$ | 1,079,497.00 | \$ | 1,118,553.00 | | 25% | |
| Aug 2012 Total | \$ | 1,318,548.00 | \$ | 1,282,273.00 | | \$ | 1,052,081.00 | \$ | 1,405,894.00 | | \$ | 1,079,497.00 | \$ | 1,118,553.00 | | \$ | 706,873.00 | \$ | 566,518.00 | | \$ | 706,873.00 | \$ | 566,518.00 | | \$ | 706,873.00 | \$ | 566,518.00 | | 0% | |
| Sept 2012 Total | \$ | 1,361,673.00 | \$ | 1,406,494.00 | | \$ | 860,691.00 | \$ | 1,043,176.00 | | \$ | 1,039,405.00 | \$ | 1,087,868.00 | | \$ | 1,039,405.00 | \$ | 1,087,868.00 | | \$ | 1,039,405.00 | \$ | 1,087,868.00 | | \$ | 1,039,405.00 | \$ | 1,087,868.00 | | 70% | |
| Oct 2012 Total | \$ | 1,244,562.00 | \$ | 1,108,392.00 | | \$ | 1,170,771.00 | \$ | 1,792,230.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | 184% | |
| Nov 2012 Total | \$ | 813,078.00 | \$ | 8,015,378.00 | | \$ | 1,720,333.00 | \$ | 8,522,473.00 | | \$ | 9,660,793.00 | \$ | 7,711,212.00 | | \$ | 9,660,793.00 | \$ | 7,711,212.00 | | \$ | 9,660,793.00 | \$ | 7,711,212.00 | | \$ | 9,660,793.00 | \$ | 7,711,212.00 | | 25% | |
| Dec 2012 Total | \$ | 1,244,562.00 | \$ | 1,108,392.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | \$ | 2,448,540.00 | \$ | 863,298.00 | | 184% | |
| YTD Sales 2012 | \$ | 12,899,581.00 | \$ | 13,838,824.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | 164% | |
| YTD Units 2012 | | 2987 | | 3576 | | 2678 | | 3250 | | 3649 | | 4028 | | 2987 | | 2678 | | 3250 | | 3649 | | 2678 | | 3250 | | 2987 | | 2678 | | 3250 | | 4.57% |
| YTD Sales 2011 | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | 2.53% | |
| YTD Units 2011 | | 2467 | | 2705 | | 2076 | | 2695 | | 2336 | | 2588 | | 2999 | | 19,381 | | 22,602 | | 4,319 | | 4,568 | | 4,819 | | 4,568 | | 4,819 | | 4,568 | | 4.57% |
| YTD Sales 2012 | \$ | 12,899,581.00 | \$ | 13,838,824.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | 164% | |
| YTD Units 2012 | | 2987 | | 3576 | | 2678 | | 3250 | | 3649 | | 4028 | | 2987 | | 2678 | | 3250 | | 3649 | | 2678 | | 3250 | | 2987 | | 2678 | | 3250 | | 4.57% |
| YTD Sales 2011 | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | 2.53% | |
| YTD Units 2011 | | 2467 | | 2705 | | 2076 | | 2695 | | 2336 | | 2588 | | 2999 | | 19,381 | | 22,602 | | 4,319 | | 4,568 | | 4,819 | | 4,568 | | 4,819 | | 4,568 | | 4.57% |
| YTD Sales 2012 | \$ | 12,899,581.00 | \$ | 13,838,824.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | 164% | |
| YTD Units 2012 | | 2987 | | 3576 | | 2678 | | 3250 | | 3649 | | 4028 | | 2987 | | 2678 | | 3250 | | 3649 | | 2678 | | 3250 | | 2987 | | 2678 | | 3250 | | 4.57% |
| YTD Sales 2011 | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | 2.53% | |
| YTD Units 2011 | | 2467 | | 2705 | | 2076 | | 2695 | | 2336 | | 2588 | | 2999 | | 19,381 | | 22,602 | | 4,319 | | 4,568 | | 4,819 | | 4,568 | | 4,819 | | 4,568 | | 4.57% |
| YTD Sales 2012 | \$ | 12,899,581.00 | \$ | 13,838,824.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | 164% | |
| YTD Units 2012 | | 2987 | | 3576 | | 2678 | | 3250 | | 3649 | | 4028 | | 2987 | | 2678 | | 3250 | | 3649 | | 2678 | | 3250 | | 2987 | | 2678 | | 3250 | | 4.57% |
| YTD Sales 2011 | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | 2.53% | |
| YTD Units 2011 | | 2467 | | 2705 | | 2076 | | 2695 | | 2336 | | 2588 | | 2999 | | 19,381 | | 22,602 | | 4,319 | | 4,568 | | 4,819 | | 4,568 | | 4,819 | | 4,568 | | 4.57% |
| YTD Sales 2012 | \$ | 12,899,581.00 | \$ | 13,838,824.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | 164% | |
| YTD Units 2012 | | 2987 | | 3576 | | 2678 | | 3250 | | 3649 | | 4028 | | 2987 | | 2678 | | 3250 | | 3649 | | 2678 | | 3250 | | 2987 | | 2678 | | 3250 | | 4.57% |
| YTD Sales 2011 | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | 2.53% | |
| YTD Units 2011 | | 2467 | | 2705 | | 2076 | | 2695 | | 2336 | | 2588 | | 2999 | | 19,381 | | 22,602 | | 4,319 | | 4,568 | | 4,819 | | 4,568 | | 4,819 | | 4,568 | | 4.57% |
| YTD Sales 2012 | \$ | 12,899,581.00 | \$ | 13,838,824.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | \$ | 11,937,231.00 | \$ | 11,978,270.00 | | 164% | |
| YTD Units 2012 | | 2987 | | 3576 | | 2678 | | 3250 | | 3649 | | 4028 | | 2987 | | 2678 | | 3250 | | 3649 | | 2678 | | 3250 | | 2987 | | 2678 | | 3250 | | 4.57% |
| YTD Sales 2011 | \$ | 11,937,231.00 | \$ | 15,687,692.00 | | \$ | 10,004,033.00 | \$ | 9,949,220.00 | | \$ | 11,937,231.00 | | | | | | | | | | | | | | | | | | | | |

A-550

EXHIBIT 16

| | 2013 Jan Total | 2013 Jan Total | Jan % | Feb 2013 Total | Feb 2013 Total | Feb % | Mar 2013 Total | Mar 2013 Total | Mar % | Apr % | May % | Jun % | Jul % | Aug % | Sep % | Oct % | Nov % | Dec % | YTD 2013 | YTD 2012 | YTD Chg % |
|-------------|------------------|------------------|-------|------------------|------------------|-------|-----------------|-----------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------------------|-------------------|-----------|
| Fred | \$ 800,002.00 | \$ 721,178.00 | 11% | \$ 800,936.00 | \$ 429,748.00 | 89% | \$ 709,714.00 | \$ 975,886.00 | -27% | | | | | | | | | | \$ 7,452,072.00 | \$ 8,889,465.00 | -13.84% |
| Annie | \$ 650,431.00 | \$ 470,385.00 | 11% | \$ 599,481.00 | \$ 541,520.00 | 9% | \$ 566,764.00 | \$ 735,964.00 | -24% | | | | | | | | | | \$ 6,974,921.00 | \$ 7,930,160.00 | -9.81% |
| Isaac | \$ 219,047.00 | \$ 316,024.00 | -12% | \$ 510,177.00 | \$ 420,770.00 | 21% | \$ 483,624.00 | \$ 612,413.00 | -44% | | | | | | | | | | \$ 13,801,455.00 | \$ 16,653,385.00 | -17.11% |
| Josh | \$ 1,439,043.00 | \$ 1,584,425.00 | -12% | \$ 1,304,169.00 | \$ 1,097,395.00 | 19% | \$ 783,804.00 | \$ 1,260,002.00 | -36% | | | | | | | | | | \$ 11,202,690.00 | \$ 10,742,648.00 | 4.26% |
| Rick | \$ 927,827.00 | \$ 860,316.00 | 9% | \$ 978,405.00 | \$ 499,459.00 | 99% | \$ 763,056.00 | \$ 425,635.00 | 79% | | | | | | | | | | \$ 8,330,484.00 | \$ 10,018,340.00 | -18.82% |
| Patrick | \$ 825,146.00 | \$ 660,634.00 | 25% | \$ 755,937.00 | \$ 684,135.00 | 10% | \$ 918,145.00 | \$ 792,635.00 | 16% | | | | | | | | | | \$ 11,176,011.00 | \$ 11,409,589.00 | -20.88% |
| Brian | \$ 936,093.00 | \$ 808,154.00 | 12% | \$ 907,985.00 | \$ 1,071,832.00 | -19% | \$ 980,198.00 | \$ 925,647.00 | 4% | | | | | | | | | | \$ 8,806,681.00 | \$ 11,404,068.00 | -14.65% |
| Beth | \$ 893,687.00 | \$ 998,092.00 | -11% | \$ 597,017.00 | \$ 657,043.00 | -8% | \$ 505,075.00 | \$ 573,500.00 | -4% | | | | | | | | | | \$ 7,837,291.00 | \$ 8,637,671.00 | -10.83% |
| Reps Totals | \$ 8,920,654.00 | \$ 9,379,029.00 | 9% | \$ 8,447,676.00 | \$ 8,397,895.00 | 20% | \$ 6,629,953.00 | \$ 6,451,892.00 | -13% | | | | | | | | | | \$ 78,517,291.00 | \$ 86,337,671.00 | -10.16% |
| HOUSE | \$ 684,510.00 | \$ 666,526.00 | 3% | \$ 1,407,614.00 | \$ 2,949,959.00 | -22% | \$ 818,314.00 | \$ 785,681.00 | 4% | | | | | | | | | | \$ 20,850,050.00 | \$ 20,648,078.00 | 4.00% |
| Totals | \$ 7,899,119.00 | \$ 7,944,020.00 | 0% | \$ 7,853,286.00 | \$ 8,139,847.00 | -4% | \$ 6,447,707.00 | \$ 7,237,653.00 | -11% | | | | | | | | | | \$ 69,667,951.00 | \$ 108,945,748.00 | -8.00% |
| Fred | \$ 696,360.00 | \$ 757,563.00 | -8% | \$ 643,425.00 | \$ 1,188,268.00 | -49% | \$ 774,800.00 | \$ 684,221.00 | 13% | | | | | | | | | | \$ 6,593,346.00 | \$ 489,418.00 | 2% |
| Annie | \$ 641,221.00 | \$ 573,946.00 | 19% | \$ 627,927.00 | \$ 857,053.00 | -27% | \$ 669,228.00 | \$ 706,971.00 | -5% | | | | | | | | | | \$ 466,657.00 | \$ 508,267.00 | -12% |
| Isaac | \$ 362,351.00 | \$ 649,000.00 | -44% | \$ 862,911.00 | \$ 715,703.00 | 21% | \$ 596,468.00 | \$ 630,684.00 | -7% | | | | | | | | | | \$ 466,559.00 | \$ 328,526.00 | 42% |
| Josh | \$ 1,323,742.00 | \$ 1,184,855.00 | 12% | \$ 1,009,892.00 | \$ 1,302,832.00 | -28% | \$ 1,191,516.00 | \$ 1,360,632.00 | -12% | | | | | | | | | | \$ 1,022,226.00 | \$ 1,465,749.00 | -32% |
| Rick | \$ 424,914.00 | \$ 691,211.00 | -39% | \$ 946,995.00 | \$ 1,125,684.00 | -16% | \$ 1,217,256.00 | \$ 990,678.00 | 23% | | | | | | | | | | \$ 592,653.00 | \$ 862,260.00 | -30% |
| Patrick | \$ 1,003,232.00 | \$ 778,083.00 | 29% | \$ 791,095.00 | \$ 745,920.00 | 31% | \$ 1,320,448.00 | \$ 894,650.00 | 64% | | | | | | | | | | \$ 1,082,632.00 | \$ 532,033.00 | 104% |
| Brian | \$ 773,036.00 | \$ 1,568,100.00 | -51% | \$ 1,036,708.00 | \$ 1,217,841.00 | -16% | \$ 1,218,770.00 | \$ 856,328.00 | 42% | | | | | | | | | | \$ 971,595.00 | \$ 1,039,405.00 | -7% |
| Beth | \$ 743,230.00 | \$ 1,763,509.00 | -31% | \$ 1,421,092.00 | \$ 972,672.00 | 46% | \$ 1,039,666.00 | \$ 1,107,652.00 | -6% | | | | | | | | | | \$ 598,258.00 | \$ 1,418,088.00 | -58% |
| Reps Totals | \$ 5,978,109.00 | \$ 7,193,287.00 | -25% | \$ 7,534,411.00 | \$ 8,193,773.00 | -8% | \$ 9,018,931.00 | \$ 7,144,812.00 | 12% | | | | | | | | | | \$ 8,788,896.00 | \$ 6,712,756.00 | -14% |
| HOUSE | \$ 1,069,546.00 | \$ 2,110,316.00 | -50% | \$ 1,733,207.00 | \$ 486,926.00 | 77% | \$ 647,082.00 | \$ 2,408,838.00 | -73% | | | | | | | | | | \$ 850,748.00 | \$ 2,846,037.00 | -71% |
| Totals | \$ 7,938,646.00 | \$ 10,028,603.00 | -30% | \$ 9,267,318.00 | \$ 8,640,699.00 | 7% | \$ 9,665,993.00 | \$ 9,549,630.00 | -9% | | | | | | | | | | \$ 6,639,644.00 | \$ 9,666,793.00 | -31% |
| Fred | \$ 654,165.00 | \$ 681,520.00 | -4% | \$ 677,802.00 | \$ 596,272.00 | 14% | \$ 659,346.00 | \$ 489,418.00 | 26% | | | | | | | | | | \$ 466,657.00 | \$ 508,267.00 | -12% |
| Annie | \$ 696,304.00 | \$ 716,859.00 | -1% | \$ 407,012.00 | \$ 541,813.00 | -26% | \$ 466,657.00 | \$ 508,267.00 | -12% | | | | | | | | | | \$ 466,559.00 | \$ 328,526.00 | 42% |
| Isaac | \$ 598,555.00 | \$ 558,014.00 | 7% | \$ 584,608.00 | \$ 677,771.00 | 3% | \$ 1,061,213.00 | \$ 1,055,375.00 | 1% | | | | | | | | | | \$ 1,022,226.00 | \$ 1,465,749.00 | -32% |
| Josh | \$ 1,412,567.00 | \$ 1,328,874.00 | 6% | \$ 771,985.00 | \$ 1,051,119.00 | -27% | \$ 771,985.00 | \$ 862,260.00 | -10% | | | | | | | | | | \$ 592,653.00 | \$ 862,260.00 | -30% |
| Rick | \$ 822,107.00 | \$ 1,049,405.00 | -26% | \$ 351,977.00 | \$ 708,873.00 | -49% | \$ 1,082,632.00 | \$ 532,033.00 | 104% | | | | | | | | | | \$ 1,082,632.00 | \$ 532,033.00 | 104% |
| Patrick | \$ 564,628.00 | \$ 1,049,232.00 | -46% | \$ 839,427.00 | \$ 850,601.00 | -1% | \$ 598,258.00 | \$ 1,418,088.00 | -58% | | | | | | | | | | \$ 971,595.00 | \$ 1,039,405.00 | -7% |
| Brian | \$ 1,013,097.00 | \$ 1,351,673.00 | -26% | \$ 1,060,640.00 | \$ 925,184.00 | 15% | \$ 774,464.00 | \$ 6,314,078.00 | -9% | | | | | | | | | | \$ 5,788,896.00 | \$ 6,712,756.00 | -14% |
| Beth | \$ 887,708.00 | \$ 1,100,839.00 | -19% | \$ 1,743,152.00 | \$ 1,210,294.00 | 44% | \$ 850,748.00 | \$ 2,846,037.00 | -71% | | | | | | | | | | \$ 6,639,644.00 | \$ 9,666,793.00 | -31% |
| Reps Totals | \$ 6,649,122.00 | \$ 7,289,516.00 | -10% | \$ 7,517,616.00 | \$ 7,524,332.00 | 0% | \$ 8,788,896.00 | \$ 6,712,756.00 | 14% | | | | | | | | | | \$ 6,639,644.00 | \$ 9,666,793.00 | -31% |
| HOUSE | \$ 1,131,727.00 | \$ 1,244,582.00 | -9% | \$ 1,743,152.00 | \$ 1,210,294.00 | 44% | \$ 850,748.00 | \$ 2,846,037.00 | -71% | | | | | | | | | | \$ 6,639,644.00 | \$ 9,666,793.00 | -31% |
| Totals | \$ 7,780,849.00 | \$ 9,136,078.00 | -15% | \$ 7,517,616.00 | \$ 7,524,332.00 | 0% | \$ 8,788,896.00 | \$ 6,712,756.00 | 14% | | | | | | | | | | \$ 6,639,644.00 | \$ 9,666,793.00 | -31% |
| Fred | \$ 805,526.00 | \$ 864,955.00 | -8% | \$ 745,854.00 | \$ 1,265,231.00 | -42% | \$ 651,392.00 | \$ 1,134,095.00 | 51% | | | | | | | | | | \$ 2,871,577.00 | \$ 1,123,116.00 | 156% |
| Annie | \$ 654,184.00 | \$ 719,259.00 | -10% | \$ 724,925.00 | \$ 1,092,444.00 | -50% | \$ 549,218.00 | \$ 673,739.00 | 24% | | | | | | | | | | \$ 5,492,918.00 | \$ 5,732,856.00 | -4% |
| Isaac | \$ 864,980.00 | \$ 769,184.00 | 11% | \$ 476,625.00 | \$ 985,455.00 | -50% | \$ 644,322.00 | \$ 1,252,826.00 | -31% | | | | | | | | | | \$ 1,030,929.00 | \$ 1,252,826.00 | -18% |
| Josh | \$ 1,166,690.00 | \$ 1,568,421.00 | -26% | \$ 1,298,387.00 | \$ 2,113,839.00 | -39% | \$ 1,496,444.00 | \$ 1,220,376.00 | 21% | | | | | | | | | | \$ 4,494,444.00 | \$ 1,220,376.00 | 267% |
| Rick | \$ 1,094,913.00 | \$ 609,298.00 | 80% | \$ 1,556,665.00 | \$ 1,455,388.00 | 7% | \$ 1,496,444.00 | \$ 609,211.00 | 11% | | | | | | | | | | \$ 678,114.00 | \$ 609,211.00 | 11% |
| Patrick | \$ 779,878.00 | \$ 897,207.00 | -14% | \$ 668,697.00 | \$ 1,725,622.00 | -61% | \$ 1,173,807.00 | \$ 1,446,349.00 | -19% | | | | | | | | | | \$ 1,173,807.00 | \$ 1,446,349.00 | -19% |
| Brian | \$ 962,715.00 | \$ 1,028,293.00 | -7% | \$ 768,983.00 | \$ 1,509,699.00 | -46% | \$ 481,251.00 | \$ 671,622.00 | -26% | | | | | | | | | | \$ 1,173,807.00 | \$ 1,446,349.00 | -19% |
| Beth | \$ 478,442.00 | \$ 915,984.00 | -48% | \$ 731,598.00 | \$ 920,476.00 | -23% | \$ 481,251.00 | \$ 671,622.00 | -26% | | | | | | | | | | \$ 481,251.00 | \$ 671,622.00 | -26% |
| Reps Totals | \$ 6,827,156.00 | \$ 7,424,941.00 | -8% | \$ 6,547,952.00 | \$ 10,969,758.00 | -39% | \$ 6,314,431.00 | \$ 7,493,311.00 | -17% | | | | | | | | | | \$ 6,314,431.00 | \$ 7,493,311.00 | -17% |
| HOUSE | \$ 3,372,669.00 | \$ 1,672,582.00 | 102% | \$ 4,520,018.00 | \$ 2,482,884.00 | 82% | \$ 2,871,577.00 | \$ 1,123,116.00 | 156% | | | | | | | | | | \$ 2,871,577.00 | \$ 1,123,116.00 | 156% |
| Totals | \$ 10,199,725.00 | \$ 9,107,024.00 | 12% | \$ 11,476,980.00 | \$ 13,452,642.00 | -15% | \$ 9,183,014.00 | \$ 8,716,499.00 | 9% | | | | | | | | | | \$ 9,183,014.00 | \$ 8,716,499.00 | 9% |

CONFIDENTIAL

BREITLING_633

| | 2013 | 2012 | YTD Chg % |
|-------------|-------|-------|-----------|
| Fred | 190 | 268 | -29.31% |
| Annie | 172 | 194 | -11.34% |
| Isaac | 315 | 350 | -9.71% |
| Josh | 243 | 250 | -2.77% |
| Rick | 213 | 239 | -10.84% |
| Patrick | 108 | 107 | 0.93% |
| Brian | 117 | 122 | -4.09% |
| Beth | 107 | 107 | 0.00% |
| Reps Totals | 1,186 | 1,344 | -11.71% |
| HOUSE | 55 | 44 | 22.73% |
| Totals | 1,241 | 1,388 | -11.53% |