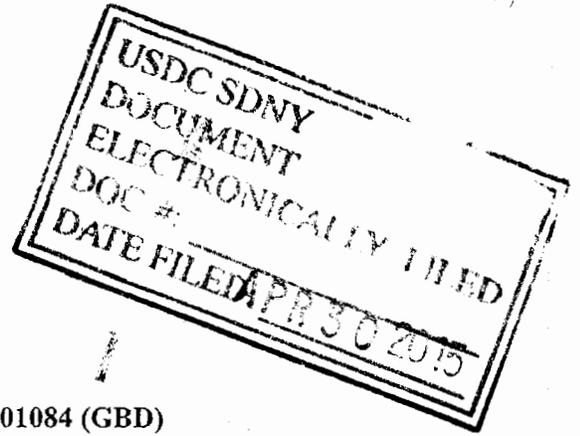


Enrudo, G.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICK M. CARGIAN,
Plaintiff,

- against -

BREITLING USA, INC.,
Defendant.

ECF Case

No. 15-cv-01084 (GBD)

STIPULATED [REDACTED] PROTECTIVE ORDER
REGARDING USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION

WHEREAS, during the course of the above-captioned action (the "Action"), parties or non-parties may be required to produce information that the party or non-party from whom information is sought considers to be valuable, sensitive, a trade secret, or otherwise confidential. Accordingly, the parties through their undersigned counsel hereby stipulate as follows:

1. Applicability. This Stipulated Protective Order shall apply to all information and materials disclosed during the course of the Action, by any party or non-party, including but not limited to information disclosed:

- (a) During any informal discovery or production of documents that may occur through cooperation/agreement of the parties;
- (b) During formal discovery;
- (c) In any pleading, document, affidavit, interrogatory answer, response to requests for admission, brief, motion, and mediation statement; and,
- (d) During deposition or other examinations before trial.

2. Definitions. The terms defined in this Section 2 shall, throughout this Stipulated Protective Order, have the meanings provided. Defined terms may be used in the singular or the plural.

- (a) “Producing Party” means the party, or person other than a party, being asked to produce or asserting a confidential interest in information designated by that party or person as confidential.
- (b) “Receiving Party” means the party receiving or requesting production of information that is confidential.
- (c) “Confidential Information” shall be and is limited to:
 - (1) As relates to individuals: all documents containing salary or other personal information concerning current and former employees of Breitling including, but not limited to, information regarding the terms and condition of employment, work evaluations, termination or any other employment action; and
 - (2) As relates to non-individuals (e.g. Defendant’s business, companies, partnerships, trusts): so much of business records which disclose trade secrets, or proprietary business plans and forecasts, financial plans and forecasts, operational plans and forecasts, sales data and information, or personal information. Any party that wishes to incorporate additional material or information as “Confidential” pursuant to this Order shall request such incorporation from the other party. The parties shall work together in good faith to resolve the issue, but if they cannot agree to the incorporation of the additional material or information, then prior to production the party seeking protection shall promptly seek the Court’s approval for the incorporations.

- (d) “Litigation Material” means all pleadings, motions, affidavits, and related papers, and all documents produced or exchanged with any Court or any settlement negotiations, and all transcripts or testimony given in depositions, in hearings before any Court, or at trial. Litigation Material includes, but is not limited to, the information described in Section 1 of this Stipulated Protective Order.
- (e) “Termination” means the dismissal of this Action with prejudice, or entry of final award or judgment after appeal or expiration without appeal of all periods to appeal.

3. Method of Designation. Any party designating Litigation Material as “Confidential” shall designate only so much of the Litigation Material that is “Confidential” as defined herein and shall separately mark each page with the identification “Confidential.”

- (a) Subject to section 7 below, any document or other tangible Litigation Material produced by a party or non-party and marked as “Confidential” is hereby designated as “Confidential.”
- (b) Subject to section 7 below, if any document or other tangible Litigation Material produced by a party or non-party is not marked “Confidential,” but later determined by a party to be “Confidential”, then no later than 30 days after production the party shall inform the other party in writing, including but not limited to by letter or by electronic mail, of such “Confidential” designation, is hereby designated as “Confidential.”
- (c) Subject to section 7 below, by oral or verbal designation during the course of an examination before trial or deposition, while on the record.

4. Treatment of “Confidential” Information.

- (a) Confidential information shall be used only in connection with this action, including preparation, discovery, mediation, settlement, trial, appeal, retrial, and enforcement of any judgment and shall not be used for any other purpose. This Order shall not govern the use or disclosure by a Party or other person of its own Litigation Material or the use or disclosure of any information in the possession of a Party, or subsequently, legitimately obtained by a Party other than by formal discovery from the Producing Party in this action, even if said information is the same as or refers to Litigation Material that has been designated “Confidential” (as defined herein).
- (b) Confidential information shall not be disclosed, revealed, or made available, in whole or in part, to any person except:
- (i) the Court, Court personnel, as well as any court reporters retained in this matter;
 - (ii) any Mediator;
 - (iii) parties, and those directors, officers, employees and agents (“Representatives”) of the parties who have a need to know in connection with the Action and who have executed Exhibit A, which is attached to this Order;
 - (iv) counsel to the parties including partners, associates, secretaries, paralegal assistants, clerical personnel, and copy services retained by such counsel;
 - (v) outside consultants or experts retained for the purpose of assisting counsel or testifying in this action;
 - (vi) Non-Parties (and their counsel), provided that the Non-Party:
 - (1) authored, received or otherwise were involved in the substance of the matters set forth in the Confidential Material; or

(2) are actual or potential witnesses or deponents, to the extent necessary to assist in the preparation for depositions, other testimony in this litigation or for the gathering of information in preparation for trial.

(vii) insurers under directors' and officers' liability policies or other insurance policies that provide or may be deemed to provide coverage for the claims asserted in this action and counsel to such insurers.

(c) Before any person described in sections v and/or vi of paragraph 4(b) above is given access to Confidential Information, that person shall sign an affidavit in the form attached hereto as Exhibit A. The party disclosing such Confidential Information to any such person shall be responsible for assuring compliance with this Order. Counsel shall be responsible for maintaining copies of all Acknowledgements signed by persons receiving Confidential Information. Upon an Order of the Court after a showing of good cause, all Acknowledgements shall be available for inspection by other counsel.

5. Maintenance of "Confidential" Information. All Litigation Material designated as "Confidential" or "Highly Confidential" shall be securely stored, and access shall be permitted only to those persons set forth in Section 4(b) of this Stipulated Protective Order as persons properly having access thereto.

6. Unauthorized Disclosure. In the event that Litigation Material designated "Confidential" is, either advertently or inadvertently, disclosed to someone not authorized to receive such information under this Stipulated Protective Order, or if a person so authorized breaches any of his or her obligations under this Stipulated Protective Order, counsel of record for the party involved shall, promptly upon becoming aware of such unauthorized disclosure or breach, give notice of such unauthorized disclosure or breach to counsel of record for the

Producing Party, including a full description of all pertinent facts, to the counsel of record for the party who initially produced the Litigation Material. Without prejudice to other rights and remedies of the Producing Party, counsel for the party making the unauthorized disclosure shall make every reasonable effort to prevent further disclosure by it or by the person who was the recipient of such information.

7. Limitations on Application of Order.

- (a) The term “Confidential Information” shall not include, and this Stipulated Protective Order shall not be construed to prevent any person from making use of or disclosing any information that:
- (i) was lawfully in his/her possession (other than as an employee of Producing Party) prior to its disclosure hereunder in connection with the Action;
 - (ii) appears in any published material available to the Producing Party’s trade or business, other than by a breach of this Stipulated Protective Order;
 - (iii) was, is, or becomes publicly available other than as a result of violation of this Stipulated Protective Order by the party asserting this exception; or
 - (iv) is independently developed without regard to information disclosed hereunder in connection with the Action.

8. Disclosure to Recipient or Author. Nothing herein shall prevent any party from presenting “Confidential” information to the original signatory, author, recipient, or addressee of the “Confidential” information.

9. Objections to Confidential Treatment. A party may object to the designation of any Litigation Material as “Confidential” at any time. If any party objects to the designation of any Litigation Material as “Confidential,” the party shall state the objection with particularity by letter to counsel for the party making the designation. If the parties are unable to resolve the

objection without judicial intervention after making a reasonable effort to do so, any party may, within a reasonable time, request that the Court remove the particular Litigation Material from confidential treatment. Until a ruling on any such motion, the Litigation Material shall continue to be deemed “Confidential” under the terms of this Stipulated Protective Order.

10. Non-Waiver of Objections to Admissibility. This Stipulated Protective Order shall not be construed as a waiver by the parties of any objection that might be raised as to the admissibility of any evidentiary material. This Stipulated Protective Order shall be without prejudice to the rights of any person to oppose production of any information on any proper ground other than its status as a trade secret or confidential business information.

11. Subpoena by Third Parties

- (a) Nothing herein shall prevent any Receiving Party from producing “Confidential” information in response to a lawful subpoena or other compulsory process from a non-party to this Stipulated Protective Order seeking production or other disclosure of Confidential information, provided that any Receiving Party receiving any such subpoena or compulsory process shall, as soon as reasonably practical, give notice by telephone and facsimile to counsel for the Producing Party, identifying the material sought and enclosing a copy of the subpoena or other compulsory process, so as to afford the Producing Party a reasonable opportunity to seek a protective order.
- (b) Subject to section 7 above, “Confidential” information produced pursuant to subpoena or other compulsory process shall continue to be treated as “Confidential” pursuant to this Stipulated Protective Order.

- (c) Notwithstanding the foregoing, each Receiving Party may disclose “Confidential” Information in the course of inspections, examinations or inquiries by federal or state regulatory agencies, self-regulatory organizations and ratings agencies that have requested or required the inspection of records that contain “Confidential” Information, provided that the Receiving Party advises the entity to which such disclosure is made of the confidential nature of the information requested and exercises reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such information.

12. Conclusion of Litigation.

- (a) Within thirty (30) days of Termination of this Action or the conclusion of this Action by settlement, judgment, or otherwise, including exhaustion of all appeals, the original and all copies of each document and thing produced to a Receiving Party, or given to any other person pursuant to this Stipulated Protective Order, designated as containing “Confidential” information shall, at the election of the Receiving Party, be returned to counsel for the Producing Party or destroyed. This Section 12(a) includes all copies of “Confidential” information and documents containing “Confidential” information made by the recipient and other persons to whom the recipient disclosed “Confidential” information.
- (b) Counsel may retain their work product, such as pleadings, notes, correspondence and memoranda, that contains or refers to “Confidential” information, provided that all such “Confidential” information shall

remain subject to this Stipulated Protective Order and shall not be disclosed to any person except as permitted by this Stipulation and Order.

- (c) Notwithstanding the foregoing, the Receiving Party may retain such copies of the “Confidential” information (including “Confidential” information stored on electronic, magnetic or similar media) in accordance with policies and procedures implemented in order to comply with legal and regulatory requirements and other legal and compliance purposes.

13. Reservation of Rights.

- (a) Nothing in this Stipulated Protective Order shall prevent any party from disclosing its own “Confidential” information to any person as it deems appropriate, and any such disclosure shall not be deemed a waiver of any party’s rights or obligations under this Stipulated Protective Order.
- (b) Nothing in this Stipulated Protective Order shall constitute: (i) an agreement by the parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon or required by the Court; (ii) a waiver by any person or party of any right to object to or seek a further protective order with respect to any discovery request in this or any other action; or (iii) a waiver of any claim of immunity or privilege with regard to any testimony, documents or information.
- (c) Evidence of the existence or non-existence of a designation under this Stipulated Protective Order shall not be admissible for any purpose.

14. Inadvertent Production of Privileged Material. It is the intent of the parties to assert and preserve all information within the attorney-client privilege and/or work product doctrine. If privileged or protected material is inadvertently disclosed, such disclosure shall not be deemed a waiver of the privilege or protection and shall in no way prejudice the assertion of the privilege or protection. If a recipient is notified in writing by a designating party that Litigation Material was inadvertently produced containing privileged or protected information, the recipient shall, at the earliest possible moment but in no event later than seventy-two (72) hours of the written notice, return that Litigation Material to the designating party, together with all copies or reproductions thereof. The recipient shall also either return to the designating party or destroy any privileged or protected work product material derived from the inadvertently produced material. The return of claimed privileged or protected material shall not in any way waive the recipient's right to challenge the claim of privilege or protection, but such challenge shall not divulge the contents of the material.

15. Amendment or Modification of Order. The provisions of this Stipulated Protective Order may be modified at any time by stipulation of the parties, or by Order of the Court. This Stipulated Protective Order shall expire and be of no further force/effect one year following the earlier of Termination of this Action or the conclusion of this Action by settlement, judgment or otherwise.

16. Execution in Counterparts. This Stipulated Protective Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

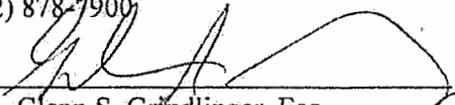
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Janice Goodman, Esq.

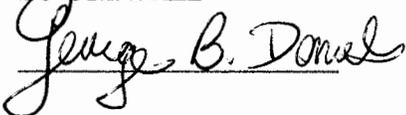
Dated: New York, New York .

FOX ROTHSCHILD LLP
Attorneys for Defendant
100 Park Avenue, Suite 1500
New York, NY 10017
(212) 878-7900

By: 

Glenn S. Grindlinger, Esq.
Zev Singer, Esq.

SO ORDERED



George B. Donald

ENC

APR 30 2015 2015

EXHIBIT A

I, _____ [print or type name], being of full age, hereby certify and acknowledge that I have received and read a copy of the Protective Order entered in the action pending in the United States District Court Southern District of New York captioned *Cargian v. Breitling USA, Inc.*, Civil Action No. 15-cv-01084 (GBD), and I understand the limitations it imposes on the use and disclosure of information designated as “Confidential.” I further understand that the unauthorized use or disclosure of any Confidential Material may constitute contempt of Court and I hereby consent to the personal jurisdiction of the U.S. District Court Southern District of New York in connection with the use or disclosure of Confidential Material. I agree to be bound by all of the terms of such Protective Order.

To further effectuate my compliance with this Order, I further submit myself to the personal and subject matter jurisdiction of the United States District Court Southern District of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature

Address