

*Janice Goodman*  
*Attorney at Law*

350 WEST 31ST STREET  
SUITE 401  
NEW YORK, NEW YORK 10001-2726

TEL 212.869.1940  
FAX 212.419.1510

E-MAIL [jg@janicegoodmanlaw.com](mailto:jg@janicegoodmanlaw.com)

July 9, 2015

**VIA ECF**

Hon. George B. Daniels  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1310  
New York, N.Y. 10007

Re: Cargian v Breitling USA, Inc.  
15 CV 01084 (GBD)

Dear Judge Daniels:

I represent the plaintiff in the above action and, pursuant to Local Civil Rule 37.2, write to request a pre-motion conference to resolve discovery disputes. The parties have made a good faith effort to resolve the issues, and although many disputes were resolved, a number of issues remain. No prior request has been made for this relief.

This is an action brought pursuant to Title VII of the Civil Rights Act, ADEA, and the New York City and State Human Rights laws alleging discrimination on the basis of gender, (non-stereotypical male), sexual orientation (gay), and age (over 50). Plaintiff was employed by Breitling USA, a high end watch maker, for 23 years when he was summarily terminated effective December 31, 2013. As alleged in his complaint, Plaintiff's performance was outstanding and he was a prized employee until a new president, Thierry Prissert ("Prissert"), joined in 2011. Since that time, plaintiff's position was in constant jeopardy. In 2011, Prissert raised his performance goal by some \$13 million dollars, an amount impossible to reach and an increase greater than established for any of the other regional sales representatives. In 2012, plaintiff was treated like one of the girls—excluded from sports conversations with Prissert, not invited to his home when others were, not included in marketing events with exposure to the clients, and generally on the periphery of the sales force. In 2013, Prissert promoted Isaac Schafrath, a man in his early 30s with no sales experience, to Regional Sales Representative and gave him part of plaintiff's territory. At the same time, plaintiff's base salary was reduced by \$34,000. Upon plaintiff's termination, Mr. Schafrath replaced him as the NE Regional Sales Representative, despite his unremarkable performance. Plaintiff alleges that these adverse actions culminating in his termination were the result of his sexual orientation—non stereotypical male—and his age. The parties are just concluding their first round of paper discovery. The following are the unresolved disputes which have arisen.

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**First Document Request 9.** Plaintiff asks for documents reflecting the organizational relationship between Breitling USA and its parent Breitling SA. Defendant refuses based on all of its 12 boiler plate general objections plus burdensomeness, over broad, incapable of reasonable response and not relevant or likely to lead to admissible evidence. Although acknowledging that Breitling SA is the parent company, defendant appears to assert that there is no control of one over the other. The importance of better understanding the corporate relationships relates to (1) identifying potential witnesses and information; (2) determining to what extent the parent corporation participated in the discriminatory actions; and (3) compelling the deposition of Marie Bodman who was the former President of Breitling USA and plaintiff's supervisor. (Discussed further below)

**Request 12.** Plaintiff asks for the 2013 Call Sheets of all Sales Representatives. Among other things, Prissert, the person defendant claims was the decision maker regarding Plaintiff's termination, cites among other things plaintiff's failure to make sufficient calls on potential clients. Plaintiff seeks the call sheets of the comparators. At first, defendant claimed the request was too burdensome, along with all other boiler plate objections. After plaintiff pointed to sources where the information might be found, defendant agreed to produce certain documents which it claims are responsive. At this time, those documents have yet to be produced and, therefore, plaintiff is not yet certain that all that exists has been produced, and specifically that the weekly "call sheets" reps had to submit are being produced.

**Second Document Request 1 & 2:** Plaintiff Request 1 asks for the entire personnel file of the 6 other Regional Sales Representatives who are the comparators, including but not limited to their job applications, earnings records; sales reports disciplinary records; performance evaluations and job descriptions. Request 2 asks that if any of the documents described in 1 are in files other than ones designated personnel file, then those documents are to be produced wherever located. Defendant concedes relevancy, but claims boiler plate objections. Defendant by way of "compromise" offers to produce documents from the personnel file, but only if plaintiff designates the "specific documents from the personnel files" that he is requesting and does not request "the full personnel file." This is an obvious trap since plaintiff would not be asking for the file, if we knew exactly what was in it or where innocent third parties. It is important to note that all of these comparators were identified as persons with knowledge in defendant's Rule 26 submission. Moreover, we reminded defendant that there is in place a broad protective order. In deference to the privacy concern, plaintiff agreed that we do not want social security numbers, any medical records (unless there was evidence of drug or alcohol abuse); or personal data reflecting beneficiaries of insurance policies or other such designated private material. Clearly comparators' evidence is critical, and plaintiff should not have to guess at just what terms of art will guarantee that he receives all relevant documents. This lesson was just learned when it was revealed that the Sales Manager maintains files on each one of the Regional Sales Representatives. We would not have known to request that file and might have received nothing if we did not try to specify what might be in that file.

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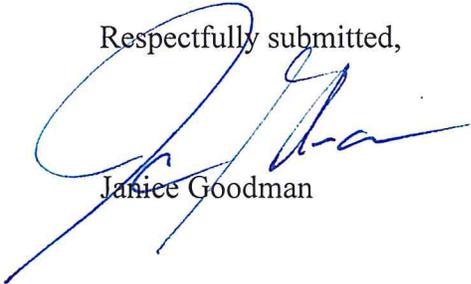
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**Deposition of Marie Bodman.** Ms. Bodman (“Bodman”) has critical information relating to Plaintiff’s job performance until she was replaced by Prissert. Plaintiff alleges that it was only with the hiring of Prissert, who plaintiff claims maintained a boys’ locker room atmosphere and treated plaintiff like one of the girls, that his performance was questioned. Bodman’s review of plaintiff’s work was always excellent. She even wrote a letter of reference after his termination. Plaintiff makes a series of allegations in his complaint about his early outstanding performance and promotions prior to the employment of Prissert, all of which were denied. (Compl. ¶¶ 11-13, 17-25). Moreover, in its Rule 26 disclosure statement defendant identifies Bodman as a person with knowledge and information. When I first discussed a deposition of Bodman with defendant’s counsel, Mr. Grindlinger, he indicated that although they would not produce documents about the parent company, she may be produced for a deposition because of her role as prior President of Breitling USA. After I formally noticed her deposition, I was informed that defendant changed its position and would not produce her claiming lack of relationship between the parent and the sub. On information and belief Bodman is employed by the parent corporation or one of the other subsidiaries. There is ample evidence that Breitling SA controls many of the activities of Breitling USA, and the other subs. The stationery has Breitling SA’s logo at the top, the sales meetings which are attended by the sales forces from all of the subs are convened and directed by Breitling SA. Indeed, prior to writing the recommendation for plaintiff, Bodman sought the concurrence of the CFO of Breitling USA. Bodman resides in Vence, France, a suburb of Paris. However, compelling her deposition here in the United States, we believe, would not be an inconvenience or burden. It is plaintiff’s understanding that she will be in California sometime August or September, and we would be glad to take the deposition there. Obviously the cost in lawyers time and money for taking that deposition would be much less than subpoenaing her in France and, as pleasurable as the idea may be, having two sets of lawyers travel to Paris.

Plaintiff requests a conference with your honor to resolve the above issues, or to be able to bring on a formal motion to compel.

Respectfully submitted,



Janice Goodman

JG:kfm

cc: Glenn Grindlinger (Via ECF)  
Zev Singer (Via ECF)