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July 13, 2015

VIA ECF

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

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

Your Honor:

We represent defendant Breitling USA, Inc. (“Breitling”) in this matter. We write to briefly respond to counsel for plaintiff Fred Cargian’s (“Plaintiff”) July 9, 2015 letter-request for a pre-motion conference to resolve discovery disputes, and pursuant to Local Civil Rule 37.2 to also request a pre-motion conference to address what we believe to be deficiencies in Plaintiff’s discovery responses. We have conferred with Plaintiff’s counsel on these issues and have been unable to resolve the disputes.

Response to Plaintiff’s Letter-Request for Conference

Plaintiff raises issues with defendant’s response to First Document Request 9, in which he seeks documents related to the relationship between Breitling USA and non-party Breitling SA. Aside from the vague and ambiguous drafting of this request, Breitling SA was not Plaintiff’s employer, is not a party to this action, and Plaintiff’s argument that this information will assist in compelling the deposition of Ms. Bodman (discussed below) is simply circular and self-serving. The relationship between a defendant and its parent company should have no bearing on the instant litigation.

With regard to “Request 12”, Plaintiff’s request for 2013 “Call Sheets” of all Sales Representatives, our position is that not only is this issue moot and resolved, but it is in fact disingenuous for Plaintiff to raise this issue with the Court when, in our numerous phone conversations regarding Plaintiff’s issues with Breitling’s discovery responses, I explained to Plaintiff’s counsel that her terminology was incorrect for the documents she was seeking (she had provided me with a sample of the document she was asking for) and we *agreed* to provide Plaintiff with documents reflecting the site visits of the Breitling sales representatives in 2013. To that end, on July 10, 2015 we provided 34 pages

of said documents to Plaintiff's counsel.

In Plaintiff's Second Document Requests 1 & 2, Plaintiff indicates that "comparator's evidence is critical" and he therefore should be entitled to the *complete* personnel files of all of Breitling's sales representatives. First, despite Plaintiff's letter, Breitling has certainly not conceded that these documents are relevant. In fact, we believe these document requests are simply a fishing expedition, confirmed by counsel's numerous comments that, despite having seen three different personnel files for Breitling sales representatives (Plaintiff's own and two additional ones that Breitling provided to the EEOC) she "[doesn't] know what is in those files" and "wants everything". Plaintiff has failed to indicate what possible information in these non-parties' personnel files could lead to the discovery of admissible evidence, besides the oft-repeated mantra that these people are 'comparators' (an assertion Breitling strongly contests). However, to try to resolve this issue, we have offered to provide any disciplinary documents or evaluations for these employees, have already provided salary histories, and have indicated to Plaintiff that we would be willing to discuss any specific types of documents that are being sought, but the blanket request for private personnel files that contain personal and irrelevant information is an inappropriate and overbroad fishing expedition.

Finally, regarding the deposition of Ms. Bodman, we do not dispute the possible relevance of her testimony, but rather, as we informed counsel, Ms. Bodman is no longer an employee of Breitling USA, our client, and therefore we do not control her and will not be producing her for a deposition (in addition to the fact that she is not in the United States). Furthermore, despite counsel's assertion, my colleague, Mr. Grindlinger, never agreed to produce Ms. Bodman for deposition, but rather agreed to discuss the issue with Ms. Goodman, which we have done.

Request for a Pre-Motion Conference to Discuss Deficiencies in Plaintiff's Discovery Responses

Separate and apart from the above, Breitling also respectfully requests a pre-motion conference with the Court to address the below discovery deficiencies in Plaintiff's responses. We have addressed these issues on the phone with Plaintiff's counsel, but have been unable to resolve these disputes.

Response to Document Request 34: Breitling requested medical records and authorizations for records for medical treatment Plaintiff received as a result of the allegations in the complaint. In particular, Plaintiff has responded to Interrogatory Number 4 that he has indeed treated with a licensed therapist, George Buscemi, *as a result of his allegations in the complaint*; however Plaintiff's counsel has refused to provide Breitling with the records or authorizations for that treatment. Unless Plaintiff is withdrawing any claim for compensatory damages or claims for emotional distress (which counsel has indicated he is not), it is unfathomable that Plaintiff, who has put his medical condition at issue by claiming these damages, will not provide the underlying records for treatment received.

Response to Document Request 47: Breitling requested all tax returns filed by Plaintiff since January 1, 2010, and Plaintiff has failed to (and refused to) provide any tax documents other than his W-2 statements for his time employed at Breitling. Plaintiff has put his income at issue in this case as he claims lost earnings as a result of his termination, and therefore Breitling should be entitled not only to Plaintiff's statements of earned income, but to his itemized income and sources of income, unless Plaintiff is withdrawing his claim for lost earnings. This is relevant to issues of mitigation and damages calculations, and we are requesting Plaintiff's full tax returns since his termination. Plaintiff's counsel

has indicated that he will not be providing *any* tax documents other than the W-2 documents, and therefore we seek the Court's intervention on this issue.

Response to Interrogatories 6-8: Breitling asked Plaintiff who discriminated against him based on his gender, sexual orientation, and age. However, his interrogatory responses indicate objections to *relevance* and over breadth for these inquiries, and these interrogatories were not answered. Breitling contends that there is almost nothing *more* relevant than the identity of the very person/people who Plaintiff claims discriminated against him, and yet Plaintiff refuses to respond to these interrogatories, instead objecting to relevance. During conversations with Plaintiff's counsel on this issue, she informed us that she would not supplement these responses because she did not want to provide her "theory of the case" or a "preview of trial strategy", which, as the Court is well aware, are not valid objections to a properly made interrogatory.

For these reasons, we respectfully request a pre-motion conference with the Court to discuss these issues and, should they not be resolved, we seek leave to file a motion to compel. We thank the Court for its consideration of these matters.

Respectfully submitted,

FOX ROTHSCHILD LLP

A handwritten signature in black ink, appearing to read "Zev Singer", written in a cursive style.

Zev Singer