

EISENBERG & SCHNELL LLP
ATTORNEYS AT LAW

January 20, 2016

BY ECF AND
Hon. Henry Pitman
US District Court
Southern District of NY
500 Pearl St.
N.Y. , N.Y. 10007

HERBERT EISENBERG
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Re: Cargian v Breitling USA Inc.
15 CV 01084 (GBD-HBP)

Dear Judge Pitman:

I represent Plaintiff in the above matter, and write to request that Defendant be ordered to produce Sebastian Amstutz for a short continuation of his deposition on either Friday, January 22, 2016 or Tuesday, January 26, 2016 . The necessity is based on the fact that although this Court ordered production of performance reviews of Plaintiff's comparators on July 29, 2015, Defendant did not do so until January 11, 2016, which was 6 months after the Court Order and a month after Mr. Amstutz deposition. Without some interpretation, the documents are meaningless to Plaintiff and it is Mr. Amstutz, VP of Breitling USA who wrote the notes reflecting the reviews, and the person best suited to testify on the issue. Time is of the essence, since discovery is scheduled to end on January 31, 2016. For that reason I request, if the Court is available, that we have a telephone conference on Thursday, January 21 in the afternoon. I know the parties are available at that time since we will be together at a deposition.

On July 29, 2015, Your Honor ordered that "Defendant is to produce the portion of the personnel files of the comparators identified by plaintiff that include performance reviews." (Copy enclosed Exh. A) Although production was made in response to the Order, it did not include completed performance reviews. I was assured everything that could be located was produced. On December 9, 2016, I deposed Sebastian Amstutz who participates in the performance review process and is the official note taker at the reviews. He described the process and the written documents that were produced at the review. He acknowledged that copies were kept by the company. Although clearly those documents should have been produced last summer, when I asked for them at the deposition Defendant's counsel insisted that I put it in writing and then by rote said he will " take it under advisement." To avoid a contentious confrontation by enlisting Court intervention, I followed

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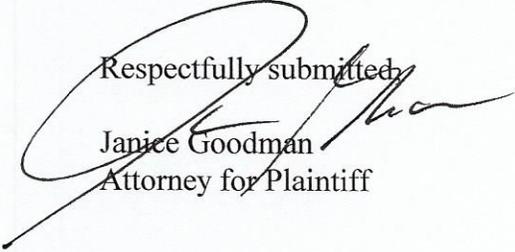
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Mr. Singer's demand and the next day wrote for the documents as well as others identified at the deposition. Defendant's counsel takes the position that documents requested at deposition are treated like any other document request and do not have to be produced in less than 30 days. Therefore, despite the Court's earlier Order the documents were not produced until January 11, 2016. A sample copy is attached as Exh. B. As you can see there are handwritten notes, and also different type face for the figures. I need explanation of how the computations were made and what the various figures mean for these documents to be meaningful to Plaintiff.

On January 18, 2016 about 9 a.m. I wrote to Mr. Singer, counsel to the Defendant, requesting the deposition solely on this subject. I told him that assuming Mr. Amstutz was not evasive, it should be a short deposition, maybe an hour, and that if more convenient to defendant, I would be prepared to conduct it by telephone. I received absolutely no response to my request. On January 19, 2016 I saw Mr. Singer at a deposition and inquired as to his response. I reminded him that time was of the essence. I was told he had to speak with Mr. Grindlinger, the partner in charge, who I know was in the office because he passed the deposition conference room several times. Yet, I heard nothing more. This morning I again wrote to Mr. Singer informing him that in light of the shortness of time I needed an answer by the end of the day, otherwise I would seek Court intervention. I received no response.

Defendant defiantly ignored the Court Order and is now trying to prejudice plaintiff by its misbehavior. It refuses to even engage in a good faith discussion on the matter thus evidently delaying the process. Those documents should have been produced well before Mr. Amstutz deposition. Had Defendant obeyed the Court Order there would be no issue. The delay has also been prejudicial because of time limitations. Other depositions in this matter are scheduled for Thursday January 21, and Monday January 25. I am out of town starting Wed. Jan. 27th for the remainder of the week. But for Defendant's failure to obey Your order, timing would not be a problem. Therefore, I request that my schedule be honored. No prior request for this relief has been made.

Respectfully submitted,


Janice Goodman
Attorney for Plaintiff

cc: Glenn Grindlinger (Via ECF)
Zev Singer, Esq. (Via ECF)

EXHIBIT A

Janice Goodman

From: NYSD_ECF_Pool@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.

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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

Zev Samuel Singer zsinger@foxrothscrudd.com

1:15-cv-01084-GBD-HBP Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=7/29/2015] [FileNumber=15069987-0] [b2ef557332acd023619bad3aadf1b8950c609c36a57fa7a00ac70e5d81e69fcd48fabb877d9d9701acc36f504e9d53c099f7c268bde50acd0546005f7a5fb252]]

EXHIBIT B

Brian Criddle, WI
 Sell in & sell out Goals

Total Bonus Potential:	\$ 50,000	% of Total
Based On Sell in&Sell out Goal \$:	\$ 32,500	65%
Qualitative Objectives bonus:	\$ 17,500	35%

Sell In	Targets	Bonus	Achieved	Bonus Due
Total Region Sell in :	\$ 15,200,000	14,630	45%	13,167
Total Regions Sell in:	\$ 109,000,000	4,870	15%	4,383
Sell Out				
2012 goal = + 5% on region versus 2011 Sell out		6,500	20%	6,500
% of In House Movement in 2012 Sell out(13% target)		6,500	20%	6,500
Total Sell in & sell out Goals		\$ 32,500	100%	\$ 30,550.00

Qualitative objectives

	20%	Bonus	Achieved	Bonus Due
Total Number of visits:	20%	\$ 3,500	275	\$ 3,500
Number of new qualified door opened :	20%	\$ 3,500	2	\$ 3,500
Average sell in price:	20%	\$ 3,500	average price need to be above \$4,300	\$ 3,500
Total Call report (90%):	20%	\$ 3,500	44 weeks of call reports	\$ 3,500
Total IFP 1 & IFP2 in your region:	20%	\$ 3,500	100 IFP 1 and 100 IFP 2	\$ 2,625
				\$ 1,750

Total Qualitative Objectives	100%	\$ 17,500		\$ 14,875
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Total Bonus Due Year 2012 \$ 45,425 / 3,120

Special 2012 Extra Bonus: \$8,960

TOTAL 2012 BONUS: \$ 54,385 \$ 51,265

BONUS 2011: \$50,000 OK

follow up on emails.
 use of office day.
 to friendly with accounts?