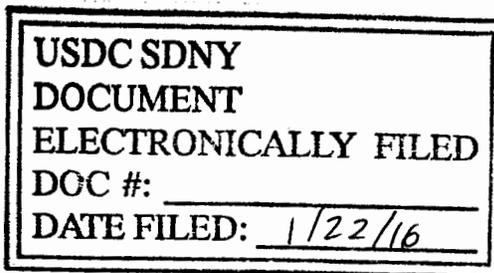


MEMO ENDORSED

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
LAURA S. SCHNELL

JULIAN R. BIRNBAUM
Of Counsel

JANICE GOODMAN
Of Counsel
Direct Dial
212-869-1940
jg@janicegoodmanlaw.com

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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Hon. Henry B. Pitman

January 20, 2016

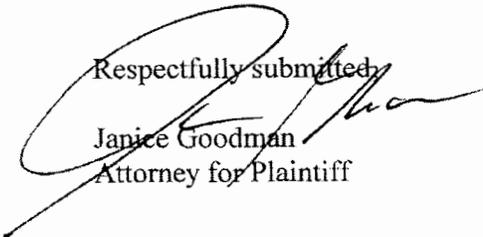
Page 2

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.

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

Zev Samuel Singer zsinger@foxrothscmid.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 Childs, VP

Total Bonus Potential	\$ 50,000	% of Total
Based On Sales & Sell Out Goals	\$ 12,500	
Qualitative Objectives Bonus	\$ 37,500	

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

Qualitative Objectives

	Targets	Bonus	% of Total
Total Number of visits	20%	\$ 3,500	10%
Number of new qualified leads opened	20%	\$ 3,500	10%
Average sell in price	20%	\$ 3,500	10%
Total Call report (90%)	20%	\$ 1,500	4%
Total I.P. 1 & I.P.2 in your region	20%	\$ 3,500	10%

Total Qualitative Objectives

Total Qualitative Objectives	100%	\$ 17,500
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Total Bonus Due Year 2012

Total Bonus Due Year 2012	\$ 48,000
---------------------------	-----------

Special 2012 Extra Bonus:

Special 2012 Extra Bonus:	\$9,960
---------------------------	---------

TOTAL 2012 BONUS: \$ 57,960

BONUS 2011 \$50,000

follow up in emails
use of office day
to friendly with contacts?

51,265
2,120
53,385

ENDORSEMENT

Frederick M. Carigan v. Breitling USA, Inc.
15 Civ. 1084 (GBD) (HBP)

Plaintiff's application to reconvene the deposition of Sebastian Amstutz is denied. The recently produced document concerning Brian Criddle is identical in form to the documents previously produced concerning plaintiff. The sales summary document that was produced concerning plaintiff alerted plaintiff's counsel to the fact that "Special Extra Bonuses" were paid and nothing prevented counsel from asking Amstutz about the "Special Extra Bonus" program and how such bonuses were calculated. The sales summary document produced concerning plaintiff, in conjunction with plaintiff's Performance Review also discloses the significance of the handwritten numbers on Criddle's sales summary: \$3,120 was received as a mid-year bonus (or advance against his total bonus) and the bonus actually paid to him at the end of the year was \$51,265. This sum is calculated as follows: \$45,425 ("Total Bonus Due Year 2012") + \$8,960 ("Special 2012 Extra Bonus") - \$3,120 (mid year bonus) = \$51,265.¹ The balance of the handwritten notations on the Criddle sales summary appear to be advice concerning sales practices and, in any event, are too trivial to warrant reconvening Amstutz' deposition.

Dated: New York, New York
January 21, 2016

SO ORDERED



HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

All Counsel

¹Although I am confident that my interpretation of Criddle's sales summary is correct, defense counsel is directed to advise me promptly if it is incorrect. Plaintiff may serve a request to admit to confirm that my interpretation is correct.