

FOX ROTHSCHILD LLP  
Glenn S. Grindlinger, Esq.  
Zev Singer, Esq.  
100 Park Avenue, Suite 1500  
New York, NY 10017  
Tel: (212) 878-7900  
Fax: (212) 692-0940

*Attorneys for Breitling USA, Inc.*

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)**

**DEFENDANT'S LOCAL  
RULE 56.1 STATEMENT OF  
UNDISPUTED MATERIAL  
FACTS**

Pursuant to Local Rule 56.1 of the Civil Rules of this Court, Defendant Breitling USA, Inc. submits its statement of material facts as to which there is no genuine issue to be tried:

1. Plaintiff Frederick Cargian (“Plaintiff” or “Cargian”), formerly employed as a sales representative by Breitling USA, Inc. (“Defendant” or “Breitling”), brings this action pursuant to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the New York State Human Rights Law, and the New York City Human Rights Laws alleging that Breitling discriminated against him based on gender, age, and sexual orientation. *See* Complaint, filed February 17, 2015 (hereinafter, “Compl.”), annexed as Exhibit A.<sup>1</sup>

<sup>1</sup> References to all exhibits are to those annexed to the Declaration of Zev Singer, dated February 29, 2016 (“Singer Decl.”), submitted herewith in support of Defendant’s Motion for Summary Judgment.

2. Plaintiff self-identifies as a gay man, and his date of birth is November 23, 1960. *Id.* at ¶10.

**Background:**

3. Breitling is in the business of, among other things, selling and distributing “Breitling” brand watches in the USA. *See* Declaration of Thierry Prissert, dated February 29, 2016 (“Prissert Decl.”), annexed as Exhibit “B”, at ¶ 5.

4. In or about February 1990, Breitling hired Plaintiff as training manager. *See* Excerpts from Deposition Transcript of Plaintiff dated September 17, 2015 (“Plaintiff Dep.”), annexed as Exhibit “D”, at 56:4-9, 23-25.

5. In or around 1992, Plaintiff also became a sales representative at Breitling, and in approximately 1995 or 1996, Plaintiff ceased his duties as a training manager at Breitling and solely worked as a sales representative continuously until his employment with Breitling ended on December 31, 2013. *See id.* at 58:20-59:7.

6. During Plaintiff’s employment at Breitling, Breitling sales representatives’ duties included: increasing sales in his/her assigned geographic region(s); achieving their sales goals as set by Breitling at the beginning of each calendar year; selling wholesale Breitling watches to retail dealers; traveling to each account/point of sale in the geographic region and meeting with the retail agents; helping work on displays and presentation of Breitling product in retail stores; helping train retail agents on the Breitling brand, products, and history; opening new points of sale for Breitling watch sales; providing weekly activity reports to management; and ensuring each account in the geographic region(s) had the correct product and inventory. *See id.* at 65:9-67:11, *see also* Prissert Decl. at ¶ 6.

7. Each sales representative at Breitling was assigned a designated geographic territory for which he/she would be responsible for sales and performing the aforementioned duties within the designated area. *See* Prissert Decl. at ¶ 7.

8. Each such geographic territory was divided into a specific number of retail accounts, or “points of sale” or “doors.” *See id.*

9. On occasion, Breitling management would shift territory among the sales representatives or assign territory to a newly hired sales representative. *See* Declaration of Charles Anderson, dated February 29, 2016 (“Anderson Decl.”), annexed as Exhibit “C”, at ¶ 6.

10. In approximately 1999, Annie Sommer became a sales representative at Breitling and Marie Bodman, Breitling’s President at the time, decided to reassign part of Plaintiff’s previously assigned territory to Ms. Sommer. *See* Plaintiff Dep., Exhibit D, at 69:13-18.

11. In approximately 2003, when Breitling hired Chuck Anderson, Ms. Bodman reassigned some of Plaintiff’s territory to Mr. Anderson (including Delaware, Maryland, Washington DC, and Virginia territory) and assigned some of another sales representative’s sales territory to Mr. Anderson. *See id.* at 71:12-20; *see also* Anderson Decl. at ¶ 5.

12. At the beginning of 2011, when Mr. Anderson became a full-time sales manager, he gave up his sales representative duties. *See* Anderson Decl. at ¶ 7.

13. When he became a full-time sales manager, Mr. Anderson’s territory was reassigned to other sales representatives at Breitling. *See id.* at ¶ 9.

14. In 2011, territory that had been previously assigned to Mr. Anderson was reassigned to Plaintiff, including accounts in Delaware, Maryland, Washington DC, and Virginia, all of which Plaintiff had previously serviced. *See* Plaintiff’s Dep, Exhibit D, at 73:11-14, *see also* Anderson Decl. at ¶ 5, 9.

15. From approximately 1995 or 1996, when Plaintiff began solely working as a sales representative at Breitling, until December 31, 2010, his direct supervisor was Ms. Marie Bodman, who was the President of Breitling during that time period. *See* Plaintiff's Dep., Exhibit D, at 61:8-11.

16. Mr. Thierry Prissert was hired by Breitling as its new President in approximately September 2010. *See* Excerpts from Deposition Transcript of Thierry Prissert dated January 6, 2016 ("Prissert Dep."), annexed as Exhibit E, at 32:10-12, 50:17-19, *see also* Prissert Decl. at ¶ 2.

17. For approximately three to six months, Mr. Prissert had a transition period/tryout period with Breitling, during which time Marie Bodman stayed employed and shared some of the duties of President with Mr. Prissert. *See* Prissert Dep., Exhibit E, at 45:13-21, 153:12-23, *see also* Prissert Decl. at ¶ 8.

18. During this transition period, Ms. Bodman educated Mr. Prissert on various business practices at Breitling, including, among other things, the methods by which the sales representatives' goals had been previously set. *See* Prissert Dep., Exhibit E at 173:23-175:23, *see also* Prissert Decl. at ¶ 9.

19. During the transition period, Mr. Prissert sat in with Ms. Bodman at the performance reviews of the sales representatives at the beginning of 2011, at which time the sales representatives' sales goals for the year were given to them. *See* Prissert Dep., Exhibit E at 55:16-56:3, 153:24-154:12, *see also* Prissert Decl. at ¶ 21.

20. After Ms. Bodman left her employment at Breitling in 2011, Plaintiff's direct supervisors until his employment ended at Breitling were Mr. Charles Anderson, the national

sales manager for Breitling, and Thierry Prissert, the President. *See* Plaintiff's Dep., Exhibit D, at 61:23-62:14, *see also* Prissert Decl. at ¶ 10.

**Salaries, Compensation, Sales Goals, and Sales for Breitling Sales Representatives:**

21. Throughout the last ten years of Plaintiff's employment as a sales representative at Breitling, the sales representatives' compensation included two components: the first component was the sales representatives' base salary and the second component was the sales representatives' bonus, which was tied to achieving specified sales goals and qualitative criteria. *See* Prissert Decl. at ¶ 11.

22. Throughout Plaintiff's employment as a sales representative at Breitling, the sales representatives (including Plaintiff) and Breitling were parties to a series of one-year employment agreements, which set forth the basic terms and conditions of the sales representatives' (including Plaintiff's) employment, supplemented by the Breitling handbook. *See* Prissert Decl. at ¶ 12; *see also* Plaintiff's Dep., Exhibit D, 209:2-5.

23. These agreements contained, among other things, each sales representative's sales goals for the year, each sales representative's bonus potential for the year (and the formula by which the bonus, if any, would be calculated), and the sales representative's base annual salary. *See* 2011-2013 Cargian Employment Agreements, annexed as Exhibit "I"; *see also* Prissert Decl. at ¶ 12.

24. Sebastien Amstutz, Breitling's Vice-President since 2005, was the Breitling officer who signed off on the employment agreements for the sales representatives from 2011-2013. *See* Excerpts from Deposition Transcript of Sebastien Amstutz dated December 9, 2015 ("Amstutz Dep."), annexed as Exhibit "F", at 13:5-7, 14:22-23, 75:24-76:6.

25. While the bonus potential for the sales representatives and the formula by which it was calculated fluctuated from year to year, it was always based on, at least partially, the sales representatives' (including Plaintiff's) ability to meet the sales goals that were established for their respective territories. *See* Prissert Decl. at ¶ 13; *see also* Anderson Decl. at ¶ 14.

26. If a sales representative met or surpassed his or her sales goals, he/she would receive his/her full quantitative bonus potential; if he/she failed to meet the sales goals, he/she would receive a bonus that was less than the full potential bonus. *See* Prissert Decl. at ¶ 13; *see also* Anderson Decl. at ¶ 14.

27. In addition to the quantitative portion of the bonus, there was also a qualitative portion. *See* Amstutz Dep., Exhibit F, at 80:12-23; *see also* Prissert Decl. at ¶ 14.

28. The criteria for this qualitative portion of the bonus changed from year to year, but it generally included criteria such as how many sales visits a sales representative had made for the year, how many trainings the sales representative performed, how many of the weekly activity reports ("call reports") the sales representative sent to management. *See* Amstutz Dep., Exhibit F, 80:12-23; *see also* Prissert Decl. at ¶ 14.

29. In any given year, the formula for calculating sales representatives' bonuses was the same for each sales representative -- there were no variations among the sales representatives. *See* Amstutz Dep, Exhibit F, 77:5-20.

30. For the years 2011, 2012, and 2013, Mr. Prissert, in consultation with Mr. Anderson, was the person who made the final decision regarding what part of the qualitative bonus each sales representative would receive. *See* Amstutz Dep, Exhibit F, 82:8-20; *see also* Prissert Decl. at ¶ 15.

31. In 2012, in addition to the sales representative's bonuses, they received based upon the quantitative and qualitative formulas found in their employment agreements for that year, each sales representative received a "Special 2012 Extra Bonus." *See* Prissert Decl. at ¶ 16.

32. The Special 2012 Extra Bonus was paid to all sales representatives that year because it had been a particularly profitable year for Breitling. *See* Prissert Decl. at ¶ 16.

33. This Special 2012 Extra Bonus was paid to the sales representatives based upon their performance, with the special bonus being a percentage of each sales representative's base monthly salary, and the percentage dependent on the sales representative's overall performance (in both sales and qualitative categories). *See* Prissert Decl. at ¶ 16.

34. In addition to annual sales goals being contained in the sales representatives' annual employment contracts, the sales representatives would be presented with their annual sales goal at their yearly review meeting which usually occurred in January or February. *See* Prissert Decl. at ¶ 17.

35. Also at the yearly review meeting, the sales representatives received a performance evaluation for the prior year and their new goals for the upcoming year. *See* Prissert Decl. at ¶ 17.

36. Ms. Bodman, Mr. Prissert, Mr. Amstutz, and Mr. Anderson were present at Plaintiff's 2010 yearly sales meeting (which occurred in January or February 2011). *See* Plaintiff's Dep., Exhibit D, 219:24-220:13

37. Mr. Prissert, Mr. Amstutz, and Mr. Anderson were present at Plaintiff's 2011 and 2012 yearly sales meetings (which occurred in January or February of the following year). *See* Plaintiff's Dep., Exhibit D, 219:24-220:13.

38. As a part of the process of the sales representatives' sales goals being set and before their yearly review meeting, the sales representatives would submit their own proposed sales goals for the upcoming year. *See* Plaintiff's Dep., Exhibit D, 208:13-21, 219:6-23; *see also* Anderson Decl. at ¶ 15.

39. "Tourneau" is the name of a specific watch retailer that the Breitling sales representatives were responsible for servicing. *See* Anderson Decl. at ¶ 17.

40. Tourneau sales were sometimes counted separately from the other sales in a sales representative's territory because Tourneau was considered a "house" account, separate from the individual sales territories/regions, and the sales representatives could not control how many watches Tourneau bought from Breitling. *See* Excerpts from Deposition Transcript of Charles Anderson, dated November 24, 2015 ("Anderson Dep."), annexed as Exhibit "H", at 213:12, 246:13-17; *see also* Anderson Decl. at ¶ 17.

41. In any given year, if a sales representative's sales goals included goals for Tourneau sales, that sales representative would be given credit for Tourneau sales for that year in calculating the sales representative's sales in relation to their sales goals. *See* Anderson Dep., Exhibit H, 249:17-251:18; *see also* Anderson Decl. at ¶ 18; Prissert Dep., Exhibit E, at 102:16-103:15.

42. The sales representatives' actual sales they receive credit for (toward their annual sales goal) are tracked through Breitling computer system. *See* Anderson Decl. at ¶ 19; *see also* Prissert Dep., Exhibit E, 203:7-204:

43. For each sale that is made within a sales representative's territory, the invoice for that sale is submitted to Breitling, inputted in Breitling's computer system, and attributed to the

respective sales representative and his/her region. *See* Anderson Decl. at ¶ 19; *see also* Prissert Dep., Exhibit E, 203:7-204:9.

44. Since 2010 through the conclusion of Plaintiff's employment at Breitling, all of the sales representatives would receive monthly or semi-annual emails from Breitling management informing them of their monthly and/or year-to-date sales for their territory. *See* Prissert Dep., Exhibit E, 204:10-205:2; *see also* Anderson Decl. at ¶ 21; Excerpts from Deposition Transcript of Annie Sommer dated January 21, 2016 ("Sommer Dep."), annexed as Exhibit "G", at 68:21-69:15, Sampling of Monthly Sales Emails, annexed as Exhibit "J".

45. In addition, since at least 2003, the sales representatives at Breitling had access to the Breitling computer system that tracked the invoices and tracked their sales by territory. *See* Prissert Dep., Exhibit E, at 204:10-205:2; *see also* Anderson Decl. at ¶22; Sommer Dep., Exhibit G, at 70:16-71:8.

46. Since at least 2003, at any time, the sales representatives could log in to that computer system to check their monthly or annual sales. *See* Prissert Dep., Exhibit E, 204:10-205:2; *see also* Anderson Decl. at ¶ 22; Sommer Dep., Exhibit G, at 70:16-71:8.

47. From 2010-2013, Breitling management held annual sales meetings to, among other things, review the sales representatives' sales numbers for the year, discuss the progress of the company, the business goals of the company moving forward, and other business matters. *See* Anderson Decl. at ¶ 23.

48. From 2010-2013, all of the sales representatives were required to (and in fact did) attend these annual sales meetings. *See* Anderson Decl. at ¶ 24; *see also* Prissert Dep., Exhibit E, 262:12-22,

49. At these annual sales meetings, the sales representatives, as a group, were presented with a PowerPoint presentation that was created by Mr. Anderson. *See* Anderson Decl. at ¶ 25; *see also* Prissert Dep., Exhibit E, at 262:21-21.

50. In Mr. Anderson's PowerPoint presentations at the annual sales meeting, there were slides that showed the sales representatives' performance and sales numbers for the prior year. *See* Anderson Decl. at ¶ 25; *see also* Sampling of PowerPoint Slides, annexed as Exhibit "K".

51. Mr. Amstutz had a role in setting the base-salaries for the sales representatives. *See* Amstutz Dep, Exhibit F, at 228:8-10.

52. During his time as President of Breitling, Mr. Prissert also had the authority to set compensation for the sales representatives. *See* Prissert Decl. at ¶ 25.

53. From 2010 through December 31, 2013, Breitling added only one new sales representative, Isaac Schafrath. *See* Prissert Decl. at ¶ 39.

54. In setting the sales representatives' base salaries, things that were considered included seniority at Breitling and the salary that a sales representative was making before he/she came to work at Breitling. *See* Amstutz Dep., Exhibit F, 228:11-229:3; *see also* Anderson Dep., Exhibit H, at 281:12-283:17.

55. In 2011, Plaintiff's base salary at Breitling was \$230,000. *See* Plaintiff's 2011 Employment Contract, Exhibit I (at 0000065), *see also* Prissert Decl. at ¶ 26.

56. In 2011, Plaintiff was the highest paid sales representative at Breitling. *See* Prissert Decl. at ¶ 26.

57. In 2011, the sales representative with the next highest salary after Plaintiff was making \$210,000 in base salary. *See* Prissert Decl. at ¶ 27.

58. In 2011, the sales representative at Breitling with the lowest base salary was a heterosexual male, and he was making \$152,500 in base salary. *See* Prissert Decl. at ¶ 27.

59. In 2012, Plaintiff's base salary at Breitling was \$230,000. *See* Plaintiff's 2012 Employment Contract, Exhibit I (at BREITLING\_577), *see also* Prissert Decl. at ¶ 28.

60. In 2012, Plaintiff was the highest paid sales representative at Breitling. *See* Prissert Decl. at ¶ 28.

61. In 2012, the sales representative with the next highest salary after Plaintiff was making \$215,000 in base salary. *See* Prissert Decl. at ¶ 29.

62. In 2012, the sales representative at Breitling with the lowest base salary was a heterosexual male, and he was making \$170,500 in base salary. *See* Prissert Decl. at ¶ 29.

63. In 2013, Plaintiff's base salary at Breitling was \$196,000. *See* Plaintiff's 2013 Employment Contract, Exhibit I (at BREITLING\_583), *see also* Prissert Decl. at ¶ 30.

64. In 2013, Plaintiff was the third-highest paid sales representative at Breitling. *See* Prissert Decl. at ¶ 30.

65. In 2013, the sales representative at Breitling with the lowest base salary was a heterosexual male, and he was making \$85,000 in base salary. *See* Prissert Decl. at ¶ 31.

#### **Plaintiff's Performance Feedback and Interactions with Supervisors**

66. Plaintiff did not always surpass or achieve his sales goals at Breitling. *See* Plaintiff Dep., Exhibit D, 34:19-35:20; *see also* Prissert Decl. at ¶ 42.

67. During Plaintiff's employment at Breitling, he received negative feedback about his performance from Ms. Bodman, Mr. Prissert, and Mr. Anderson. *See* Plaintiff Dep., Exhibit D, 121:22-122:4.

68. Plaintiff testified that Ms. Bodman gave Plaintiff negative feedback about his schedule and about “trying to get a certain account’s numbers up and asking why that specific account wasn’t doing better.” *See id.* at 122:5-9, 123:23-124:4.

69. Plaintiff testified that Mr. Anderson criticized Plaintiff’s performance on similar topics that Ms. Bodman had criticized, including questioning Plaintiff’s schedule, how many visits Plaintiff had made, and regarding the performance of certain accounts. *See id.* at 124:21-125:21.

70. Plaintiff testified that Mr. Prissert criticized Plaintiff’s performance about the “numbers per account,” certain accounts that were not performing, and Plaintiff’s schedule. *See id.* at 126:13-17.

71. Plaintiff testified that Mr. Anderson and Mr. Prissert asked him to make more sales visits. *See id.* at 131:9-13.

72. While employed at Breitling, Ms. Bodman, Mr. Prissert, and Mr. Anderson told Plaintiff his sales numbers were low. *See id.* at 133:11-18.

73. On October 19, 2010, Ms. Bodman sent Plaintiff the email annexed as Exhibit “L,” that read, in part, “visiting 4 doors in 4 days is not what someone who makes over 200K a year can keep on doing.” *See* Exhibit L.

74. On June 14, 2011, Mr. Prissert sent Plaintiff the email annexed as Exhibit “M,” that read, in part, “I am almost speechless when I read your call report...No visits on June 7 and 8..?!...That is not at all what I expect from you or any other rep, furthermore that we agreed to reduce your territory last Thursday (because you said you were overwhelmed and was working too much) and expect you to schedule travel and visit more accounts every week...” *See* Exhibit M.

75. Plaintiff responded to Mr. Prissert's June 14, 2011 email, writing, in part: "I only wish I was sitting around having margaritas while I am not at a store as you all seem to think." *See id.*

76. On February 15, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit "N", that read, in part, "My surprise was to see office days on Monday and Tuesday last week-meaning there were three in a row. We simply can't stay behind our desks and accomplish our goals...Looking at the month there are not a lot of visits...I/we are here to help in any way we can..." *See Exhibit N.*

77. On July 16, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit "O" that read, in part, "Attached are your June 30 results...There are some concerns with the results..." *See Exhibit O.*

78. On July 23, 2012, Mr. Prissert sent Plaintiff the email annexed as Exhibit "P", that read, in part, "Hope you can catch up to the \$15,400,000 target...Good luck to you..." *See Exhibit P.*

79. On August 13, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit "Q", that read, in part, "the average price of pieces sold is the lowest of the regions...if you were to match the B[reitling] USA average this year it would be...reducing your shortfall." *See Exhibit Q.*

80. On September 26, 2012, Mr. Prissert sent Plaintiff the email annexed as Exhibit "R", that read, in part, "We are very concerned that the results in your region are still far behind expectations and also the only region double digit down versus last year numbers...you are -19% versus 2011...the only other region behind last year is -3% versus last year...In 2011, your territory was already the least performing one (growth over 2010) which means , as we discussed

several times, that Breitling business is ‘melting’ in the Northeast 1 and we are loosing [*sic*] market share in your area since January 2010...I am very concerned that you might not reach **any** of the goals, we set in January, (quantitative and qualitative) for your territory...We are running out of time!” *See* Exhibit R.

81. On October 5, 2012, Mr. Anderson sent Plaintiff the email annexed as Exhibit “S”, that read, in part, “With respect to your region, we see that the total sell in is the most challenged area for B[reitling] USA down 19.9% versus 2011 YTD.” *See* Exhibit S.

82. On March 5, 2013, Mr. Anderson sent Plaintiff the email annexed as Exhibit “T”, that read, in part, “Your region has suffered a lot over the last two years and falling short this year is not an option. I will help you in any way I can.” *See* Exhibit T.

83. On May 24, 2013, Mr. Anderson sent Plaintiff the email annexed as Exhibit “U”, that read, in part, “You have a very important region and not so long ago when I was still covering MD and VA, it was the second most sales generating region we had. Today, it has fallen back dramatically in sell in....” *See* Exhibit U.

84. On June 4, 2013, Mr. Prissert sent Plaintiff the email annexed as Exhibit “V”, that read, in part, “I am concerned in the trend of your numbers...We heave [*sic*] been repeating again and again that your schedule of visits is too light and that you should spend more time at the store...Your results...show me that you are not really using all the tools you have or capitalizing on opportunities...In other words, you keep doing it your ways and ate [*sic*] the pace you think is right...I just want to reiterate that achieving your target is key to us and for you (especially this year, after your region has been reduced so you can focus on less accounts and be more productive)...Finally, I want you to succeed and achieve your goals but I am not sure you are doing all that you can and need to be doing to make it happen.” *See* Exhibit V.

85. On September 11, 2013, Mr. Prissert sent Plaintiff the email annexed as Exhibit “W”, that submitted to Plaintiff his new sales goals, and that read, in part, “Hope you make it happen in the next months...Wishing you to succeed!” *See* Exhibit W.

86. Plaintiff testified, with regard to the September 11, 2013 email from Mr. Prissert (Exhibit W and marked at Plaintiff’s deposition as Exhibit B-24) that he believed that Mr. Prissert wanted Plaintiff to succeed. *See* Plaintiff’s Dep., Exhibit D, at 236:19-237:16

87. Plaintiff received the Mid-Year 2011 performance review annexed as Exhibit “X”, which states, in part, “Fred’s territory is not performing as it should.” *See* Exhibit X.

88. Plaintiff received the Year-end 2011 performance review annexed as Exhibit “Y”, which states, in part, “Fred had a tough year and missed his target by \$5 mio[sic]!..Fred did not send all his call reports.” *See* Exhibit Y; *see also* Plaintiff’s Dep., Exhibit D, at 186:6-16.

89. Plaintiff received the Year-end 2012 performance review annexed as Exhibit “Z”, which states, in part, “Sales were down in 2012...” *See* Exhibit Z; *see also* Plaintiff’s Dep., Exhibit D, at 192:18-193:9.

90. At the 2012, Breitling sales meeting, Plaintiff stated, in front of all of the other sales representatives, that he would only work until 5 o’clock. *See* Plaintiff Dep. at 148:17-151:3.

91. In Plaintiff’s 2012 self-evaluation, in response to the question “Would he/she be better in another position?”, Plaintiff wrote “Yes, president.” *See* 2012 Self Evaluation annexed as Exhibit “AA”; *see also* Plaintiff’s Dep., Exhibit D, 175:10-177:17

92. At a Breitling event in Reno in 2012, Plaintiff lost his temper. *See* Plaintiff’s Dep., Exhibit D, at 166:10-11.

93. On September 18, 2012, Plaintiff received a written warning from Mr. Prissert, which stated, among other things, that Plaintiff engaged in inappropriate behavior and language and cursed at Mr. Prissert, the President of Breitling, in front of colleagues and guests at a bowling outing in Reno on September 16, 2012. *See* Written Warning Email, annexed as Exhibit “BB”, *see also* Plaintiff’s Dep. at 169:24-170:3.

94. On April 9, 2012, Plaintiff received an email from Mr. Prissert, annexed as Exhibit “CC”, in which Mr. Prissert informed Plaintiff that it was not acceptable at Breitling to give cash envelopes to colleagues. *See* Exhibit CC.

### **Plaintiff’s Sales Goals and Sales Performance**

95. The sales goal that was set by Breitling for Plaintiff at the beginning of 2011 was 24,995,000 (including Tourneau sales). *See* Plaintiff’s 2011 employment contract, Exhibit I (at 0000065).

96. During 2011, Plaintiff’s sales goal was reduced to \$23,760,000. *See* Exhibit K (at BREITLING\_9052); *see also* Anderson Decl. at ¶ 27.

97. Ms. Bodman made the ultimate decision on how much to set Plaintiff’s 2011 sales goal. *See* Prissert Decl. at ¶ 22.

98. In 2011, Plaintiff’s sales at Breitling were approximately \$18,767,811, including Tourneau sales. *See* Exhibit K (at BREITLING\_9031 and BREITLING\_9052); *see also* 2011 Sales Chart annexed as Exhibit “DD” (BREITLING\_8804); Anderson Decl at ¶ 28.

99. Plaintiff’s 2011 sales were approximately \$4,992,189 less than the sales goals that had been set for him that year, and he achieved only 79% of his set sales goal. *See id.*

100. In 2011, Breitling employed seven sales representatives. *See* Prissert Decl. at ¶ 20.

101. In 2011, Plaintiff was the sales representative who achieved the lowest percentage of his sales goals. *See* Anderson Decl. at ¶ 29.

102. Plaintiff's 2011 sales were approximately \$850,645 more than Breitling had sold to the same territory the year prior (an increase of 5%). *See* Exhibit DD; *see also* Exhibit K (at BREITLING\_9052) *see also* Anderson Decl. at ¶ 30.

103. In 2011, Plaintiff was the sales representative who increased his sales as compared to the same territory the prior year by the lowest percentage (5%) out of seven sales representatives. *See* Exhibit K (at BREITLING\_9052); *see also* Anderson Decl. at ¶ 30.

104. On December 20, 2011, Plaintiff emailed Mr. Prissert and Mr. Anderson, attaching his proposed sales goals for the upcoming year, 2012, in which he projected his sales would be \$16,475,000, excluding Tourneau sales. *See* Email dated December 20, 2011, Exhibit EE.

105. At the beginning of 2012, the sales goal that was set by Breitling for Plaintiff (excluding Tourneau) was \$16,500,000. *See* Plaintiff's 2012 Employment Agreement, Exhibit I (at BREITLING\_577).

106. Mr. Prissert was the person who ultimately made the decision in setting Plaintiff's 2012 sales goal, in consultation with Mr. Anderson. *See* Prissert Decl. at ¶ 24; *see also* Anderson Decl. at ¶ 31.

107. In July 2012, Mr. Prissert decided to reduce Plaintiff's sales goal by 1.1 million dollars, down to \$15,400,000 (excluding Tourneau sales). *See* 2012 Goal Reduction Email, as Exhibit FF.

108. In 2012, Plaintiff's sales at Breitling were approximately \$12,899,581 (excluding Tourneau sales). *See* 2012 Sales Chart, Exhibit GG (at page 0000293), *see also* Exhibit K (at

BREITLING\_9065 and BREITLING\_9073); 2012 NE1 Sales Chart, Exhibit HH (BREITLING\_8808); Anderson Decl. at ¶ 32.

109. Plaintiff's 2012 sales were approximately \$2,500,419 less than the sales goals that had been set for him that year (he achieved only 83.76% of his sales goal). *See id.*; *see also* Anderson Decl. at ¶ 32.

110. In 2012, Breitling employed seven sales representatives. *See* Prissert Decl. at ¶ 23.

111. In 2012, Plaintiff was the sales representative who achieved the lowest percentage of his sales goals. *See* Exhibit K (at BREITLING\_9073); *see also* Anderson Decl. at ¶ 33.

112. Plaintiff's 2012 sales were approximately \$938,000 less than Breitling had sold to the same territory the year prior (a decrease of approximately 6.8%). *See* Exhibit HH (at BREITLING\_8808); *see also* Exhibit K (at BREITLING\_9065); Anderson Decl. at ¶ 34.

113. In 2012, Plaintiff was the sales representative whose sales, as compared to the same territory the prior year, decreased by the highest percentage (6.8%). *See* Exhibit K (at BREITLING\_9065); *see also* Anderson Decl. at ¶ 34.

114. The sales goal that was set by Breitling for Plaintiff at the beginning of 2013 (excluding Tourneau) was \$11,200,000. *See* Plaintiff's 2013 Employment Agreement, Exhibit I (at BREITLING\_583).

115. Mr. Prissert was the person who ultimately made the decision in setting Plaintiff's 2013 sales goal, in consultation with Mr. Anderson. *See* Prissert Decl. at ¶ 24; *see also* Anderson Decl. at ¶ 35.

116. In September 2013, Mr. Prissert decided to reduce Plaintiff's sales goal by \$560,000, so that his new goal would be \$10,640,000 (excluding Tourneau sales). *See* 2013 Goal Reduction Email, Exhibit II.

117. In 2013, Plaintiff's sales at Breitling were approximately \$8,452,072 (excluding Tourneau sales). *See* 2013 Sales Chart, Exhibit JJ (BREITLING\_633); *see also* Plaintiff's Dep., Exhibit D, 204:18-205:20; Anderson Decl. at ¶ 36.

118. Plaintiff's 2013 sales were approximately \$2,187,928 less than the sales goals that had been set for him that year (he achieved only 79% of his sales goal). *See* Exhibits II, JJ, *see also* Anderson Decl. at ¶ 36.

119. In 2013, Breitling employed eight sales representatives. *See* Prissert Decl. at ¶ 23.

120. In 2013, Plaintiff was tied for achieving the second lowest percentage of his sales goals. *See* Anderson Decl. at ¶ 37.

121. Plaintiff's 2013 sales were approximately \$1,357,393 less than Breitling had sold to the same territory the year prior (a decrease of approximately 13.8%). *See* Exhibit JJ; *see also* Anderson Decl. at ¶ 38.

### **Changes to Plaintiff's Sales Territory and the Promotion of Isaac Schafrath**

122. At the beginning of 2011, Plaintiff was given additional territory for which he would be responsible as a sales representative; he received approximately 20 additional "doors" or accounts to cover. *See* Prissert Dep., Exhibit E, 165:10-13; *see also* Prissert Decl. at ¶ 32.

123. The additional territory that Plaintiff was assigned to cover at the beginning of 2011 had previously been serviced by Mr. Anderson. *See* Anderson Decl. at ¶ 5, 9.

124. Plaintiff testified that Ms. Bodman was the one who decided to assign him the new territory in the beginning of 2011 that had previously been serviced by Mr. Anderson. *See* Plaintiff Dep., Exhibit D, 73:8-22.

125. Part of the territory that was added in 2011 to Plaintiff's responsibility included Southern Virginia. *See* Anderson Decl. at ¶ 10.

126. Because Plaintiff had been assigned the additional territory, Breitling increased his bonus potential from \$45,000 to \$55,000. *See* Prissert Decl. at ¶ 32.

127. During 2011, Plaintiff requested that Southern Virginia territory be assigned to a different sales representative, and in the first half of 2011, the Southern Virginia territory was reassigned to sales representative Rick Lambert. *See* Prissert Decl. at ¶ 33; *see also* Anderson Decl. at ¶ 11.

128. When the Southern Virginia territory was reassigned to Mr. Lambert, Plaintiff's bonus potential was not reduced. *See* Prissert Decl. at ¶ 33.

129. When Mr. Lambert's was assigned the Southern Virginia territory, his salary and bonus potential were not increased. *See* Prissert Decl. at ¶ 33; *see also* Anderson Decl. at ¶ 12.

130. At the end of 2012 or the beginning of 2013, Mr. Prissert decided to reduce the territories that Plaintiff and sales representative Annie Sommer had previously covered in 2012. *See* Prissert Dep., Exhibit E, at 86:8-22; *see also* Prissert Decl. at ¶ 34.

131. Mr. Prissert discussed this decision with Mr. Anderson and Mr. Amstutz. *See id.* at 86:23-87:14

132. Mr. Prissert testified that the reason he reduced the territories of Ms. Sommer and Plaintiff was because: (i) the sales performance of these two sales representatives for 2012 was below expectations; (ii) Mr. Prissert wanted to give both individuals a chance to succeed in a

smaller territory; (iii) they were not handling the larger territory in the right manner, and (iv) sales in the two territories were not where they needed to be and the salespeople were not achieving their goals in those territories, so they needed restructuring. *See* Prissert Dep., Exhibit E, at 87:15-24.

133. In 2013, at the time that Plaintiff and Ms. Sommer's territories were reduced, Mr. Prissert decided to reduce their base salaries as well. *See* Prissert Decl. at ¶ 36.

134. In 2013, Plaintiff's base salary was reduced to \$196,000. *See* Anderson Dep., Exhibit H, at 333:3-5; *see also* Prissert Decl. at ¶ 30.

135. Mr. Prissert was 44 years old at the time he decided to reduce Plaintiff's salary. *See* Prissert Decl. at ¶ 37.

136. Mr. Prissert testified that at the same time that Mr. Prissert decided to reduce Plaintiff's territory and salary, a new sales representative would need to be added to cover territory removed from Ms. Sommer and Plaintiff. *See* Prissert Dep., Exhibit E, at 88:20-89:13.

137. Mr. Prissert decided to promote Isaac Schafrath, who had previously been the Vault Manager at Breitling, to sales representative. *See* Prissert Decl. at ¶ 39.

138. Mr. Prissert testified that the reason he decided to promote Mr. Schafrath to the sales representative position was that: (i) Mr. Prissert preferred to promote someone from within the company, (ii) he wanted to give a chance to an employee of the company who had worked for Breitling for many years, (iii) Mr. Schafrath was performing well in his current job, (iv) Mr. Schafrath had expressed a desire to do something else within the company, (v) Mr. Schafrath knew the brand very well, and (vi) Mr. Schafrath knew the product very well. *See* Prissert Dep., Exhibit E, at 92:19-94:2.

**Miscellaneous Topics:**

139. Plaintiff never made a complaint to anyone at Breitling that he was being harassed or treated differently because of his age, sexual orientation, or gender. *See* Plaintiff's Dep., Exhibit D, at 288:12-21.

140. The yearly watch and jeweler show in Basel, Switzerland that the sales representatives attended, was so crowded that there was a shortage of hotel rooms and the Breitling sales representatives who attended had to share rooms. *See* Sommer Dep, Exhibit G, at 15:19-23; *see also* Anderson Decl. at ¶ 39.

141. On March 15, 2011, Plaintiff sent an email to Monika Pieren, the head of events at Breitling Switzerland, requesting a specific kind of room for himself and Ms. Sommer for the Basel, Switzerland trip, and wrote in the email "Annie and I are rooming together this year because of the mix of men and women from the US...Annie and I have shared rooms all the years we have attended. I think this is my 18<sup>th</sup>, Annie's 17<sup>th</sup>." *See* March 15, 2011 Email, Exhibit KK; *see also* Plaintiff's Dep., Exhibit D, at 108:5-21.

142. Annie Sommer is a good and close friend of Plaintiff's, and was his closest friend at Breitling. *See* Plaintiff's Depo., Exhibit D, at 103:19-104:12

143. Plaintiff has socialized with Ms. Sommer outside of work and they have been to each other's homes. *See id.*

144. Ms. Sommer does not believe that Mr. Cargian was treated any worse than anyone else at Breitling because he's gay. *See* Sommer Dep., Exhibit G, at 39:24-40:3.

145. Ms. Sommer and Plaintiff have taken vacations together. *See* Sommer Dep., Exhibit G, at 62:22-63:16.

146. Ms. Sommer and Plaintiff have shared rooms on some of those vacations that they took together. *See id.*, at 63:17-20, 71:21-25.

147. Mr. Prissert never made any comments to Plaintiff about his age. *See* Plaintiff's Dep., Exhibit D, at 293:18-20.

148. Mr. Prissert never made any comments to Plaintiff about his sexual orientation. *See id.* at 293:21-23

149. Other than one comment where Plaintiff claims Mr. Prissert called him "darling", Mr. Prissert made no comments to Plaintiff about his gender. *See id.* at 294:5-8.

150. Plaintiff claims that Mr. Anderson made only one joke about Plaintiff's age, saying "you're so old, you wouldn't remember that – you probably didn't remember that." *See id.* at 272:24-273:19.

151. The only comments that Mr. Anderson made regarding Plaintiff's sexual orientation was saying something like "because you're gay, you didn't get that" with regard to "numbers" or something they ate at dinner, and besides that, no other comments about Plaintiff's sexual orientation. *See id.* at 292:2-25.

152. In 2013, Breitling uncovered the fact that sales representative Brian Criddle had misrepresented his customer visits, submitted false expense reports to Breitling for personal expenses, and misused his Breitling credit card. *See* Prissert Dep., Exhibit E, at 61:19-62:15; *see also* Anderson Dep., Exhibit H, at 102:7-19.

153. After Mr. Anderson saw a discrepancy in Mr. Criddle's expense report, he conducted an investigation and made the determination that Mr. Criddle had been untruthful on his reporting to Breitling. *See* Anderson Dep., Exhibit H, at 103:5-12.

154. As a result of Mr. Criddle's misrepresentations, he received a written warning from Breitling. *See* Prissert Dep., Exhibit E, at 64:24-65:9.

155. Mr. Prissert was the person who decided to give Mr. Criddle the warning. *See id.*

156. Once Mr. Prissert learned of Mr. Criddle's untruthful reporting to Breitling, Mr. Prissert decided to give Mr. Criddle the written warning, regardless of Mr. Criddle's explanation and whether Mr. Criddle admitted his wrongdoing or not. *See* Prissert Dep., Exhibit E, at 68:13-69:5; *see also* Prissert Decl. at ¶ 54; Anderson Dep., Exhibit H, at 109:22-110:3.

### **Plaintiff's Termination**

157. On or about December 13, 2013, Breitling informed Plaintiff that it would not be renewing his employment contract and would be terminating his employment with Breitling, effective December 31, 2013. *See* Plaintiff's Dep., Exhibit D, at 216:8-217:12.

158. It was Mr. Prissert who ultimately decided to terminate Plaintiff's employment at Breitling. *See* Prissert Decl. at ¶ 48.

159. Mr. Prissert, was 45 years old at the time he decided to terminate Plaintiff from Breitling and at the time Plaintiff was informed that he would be terminated from Breitling. *See* Prissert Decl. at ¶ 50.

160. At the time Plaintiff left the employment of Breitling, in December 2013, there were 7 other sales representatives working at Breitling: Annie Sommer, 47 years old, Beth Haddad, 45 years old, Brian Criddle, 48 years old, Josh Haley, 40 years old, Patrick Cawthorne, 49 years old, Rick Lambert, 47 years old, and Isaac Schafrath, 33 years old. *See* Prissert Decl. at ¶ 51.

Dated: February 29, 2016  
New York, New York

FOX ROTHSCHILD LLP

*/s/ Zev Singer*

By: \_\_\_\_\_

Glenn S. Grindlinger

Zev Singer

100 Park Avenue, Suite 1500

New York, New York 10017

(212) 878-7900

*Attorneys for Breitling USA, Inc.*