

EISENBERG & SCHNELL LLP  
ATTORNEYS AT LAW

July 14, 2016

VIA ECF AND  
FAX (212-805-6737)  
Hon. George B. Daniels  
U.S. District Court Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1310  
New York, N.Y. 10007

Re: Cargian v Breitling USA  
15 CV 01084 (GBD-HBP)  
New Case Law on Summary Judgment

HERBERT EISENBERG  
LAURA S. SCHNELL

JULIAN R. BIRNBAUM  
Of Counsel

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

Dear Judge Daniels:

I write to bring to the Court's attention the Second Circuit's recent decision emphasizing the importance of District Courts reviewing the totality of the evidence when ruling on summary judgment motions. This ruling is pertinent to your ruling on Defendant's summary judgment motion now *sub judice*.

In *Walsh v New York City Housing Authority*, 2016 WL 3632245 (2d Cir. July 7, 2016), the Court strongly reaffirmed its direction that District Courts must "examin[e] the record as a whole, just as a jury would, to determine whether a jury could reasonably find an invidious discriminatory purpose on the part of the employer." *Id.* at \*3. "A motion for summary judgment may be defeated where a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Id.* (emphasis added) Whether the Court uses the metaphor of drawing a mosaic, as did Judge Chin in *Vega v. Hempstead Union Free School District*, 801 F.3d 72, 86 (2d Cir. 2015), or the brick wall building argued by Vinny Gambini, cited by Judge Hall, the message is clear—it is the totality, not piecemeal analysis, of the evidence that is to be applied.

In this case, the evidence, read as a whole, offers ample support from which a jury can reasonably find invidious discrimination. For example, the fact that until the instatement of a new

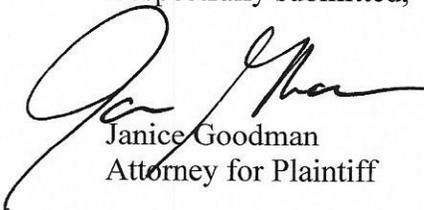
THE WOOLWORTH BUILDING  
233 BROADWAY, SUITE 2704  
NEW YORK, NEW YORK 10279

PHONE 212.966.8900  
FAX 212.966.2505  
eisenbergschnell.com

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President, Cargian was the leading salesman at Breitling belies claims of poor work performance and lack of interest in the job (Pl Br. Pp 2-3); the documents show Cargian's sales performance was better than other sales reps who were retained and in terms of effort, he made more sales calls than several of the comparators (Pl. Br. Pp23-24); he was given the highest and unobtainable goals for reasons unsupported by anything in the record (Pl Br. P 24) sexism was rampant at the workplace and Cargian, as an openly gay man, was treated like one of the "girls" (a p.....) (Pl. Br. Pp 10-11,21-23) and most consequentially, the fact that no search was made for his replacement by a qualified candidate, but rather he was replaced by a straight man 20 years his junior with absolutely no selling experience or any discernable qualifications for the job, undermines the claimed valid business reason of Plaintiff's poor performance (Pl. Br. Pp6-7,17-18). See Plaintiff's brief in general for the myriad of facts which taken together could lead a jury to reasonably find that Defendant's rationales are without merit, and that invidious discrimination played a motivating role in the decision.

Respectfully submitted,



Janice Goodman  
Attorney for Plaintiff

Cc: Zev Singer, Esq. (via ECF and E-Mail)  
Glenn Grindlinger, Esq. (via ECF and E-Mail)