

Donna Dell'olio

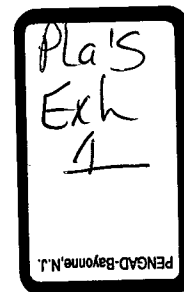
From: Donna Dell'olio
Sent: Wednesday, September 23, 2009 12:32 PM
To: 'Lessmann, Ryan (DEN)'
Subject: Gilman

Ryan,

I haven't received any of the reports for Target store 1501. We continued the deposition of Jennifer Miyamoto so I could have those reports when deposing her.

Please provide them to me this afternoon.

Donna Dell'Olio
Cornish & Dell'Olio
431 North Cascade Avenue
Colorado Springs, Colorado 80903
(719) 475 1204
(719) 475 1264 (fax)
ddellolio@cornishanddellolio.com



Donna Dell'olio

From: Donna Dell'olio
Sent: Wednesday, September 23, 2009 3:08 PM
To: 'Lessmann, Ryan (DEN)'
Subject: Gilman

Please provide all DTL reports to me at this time. I relied upon your firms representation that there would be a good faith effort to collect all scored reports for Target 1505 in postponing the final decision maker's deposition.

Donna Dell'Olio
Cornish & Dell'Olio
431 North Cascade Avenue
Colorado Springs, Colorado 80903
(719) 475 1204
(719) 475 1264 (fax)
ddellolio@cornishanddellolio.com

Donna Dell'olio

From: Lessmann, Ryan (DEN) [LessmannR@jacksonlewis.com]
Sent: Tuesday, September 29, 2009 2:10 PM
To: Donna Dell'olio
Subject: Gilman - Target

Donna – I'm still trying to pull together some documents with the client to respond to your Second Set of Requests for discovery. Are you ok with us producing on Friday, along with our responses to the Third Set?

Thanks, Ryan

Please note new address

Ryan P. Lessmann
Attorney at Law
Jackson Lewis LLP
950 17th Street, Suite 2600
Denver, Colorado 80202

303.225.2418 | Direct
303.892.5575 | Fax

lessmannr@jacksonlewis.com

www.jacksonlewis.com

Representing management exclusively in workplace law and related litigation.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Donna Dell'Olio
Ian D. Kalmanowitz
Bradley J. Sherman

CORNISH AND DELL'OLIO
LAWYERS
431 NORTH CASCADE AVENUE
SUITE 1
COLORADO SPRINGS, COLORADO 80903-3378
TELEPHONE: (719) 475-1204
FAX: (719) 475-1264
ddellolio@cornishanddellolio.com

September 30, 2009

Liza S. McKelvey
Ryan Lessmann
Jackson Lewis LLP
950 17th Street, Suite 2600
Denver, Colorado 80202
Email: mckelveyl@jacksonlewis.com

RE: *Gilman v. Target*

Dear Ms. McKelvey and Mr. Lessmann:

My view of the bankruptcy issue in this case is that Target has a right to receive a release of claims from the Trustee if a settlement is reached, together with approval of the Bankruptcy Court if appropriate. If you think you have a good motion for dismissal of the action based on judicial estoppel you need to file it. Based on the authority you have produced to date such a motion in this case has no merit. A great deal of time has been spent on this issue to date. No doubt this issue has prevented your firm from preparing timely discovery responses.

As you are aware, numerous documents requested in this action have not been produced by Target. I can't evaluate the case for settlement purposes when documents central to the factual issues have been withheld.

Our second set of discovery requests, served August 27, 2009, were written in reliance on Target's responses to our initial interrogatories. In Target's answers to our initial interrogatories, Miyamoto was identified as the final decision maker. She admitted at her deposition taken September 24, 2009 that Allison Paup actually wrote the first two disciplinary documents and collaborated on the final written warning. Because the termination decision was based in part on the first and second disciplinary actions we will need to see the attendance records and disciplinary records related to attendance for all employees supervised by Miyamoto, Paup, and Singleton. Since we were affirmatively misled by the response provided by Target these documents should be produced without another discovery request. Please let me know whether you intend to do that.

The individual who wrote responses to our first set of discovery requests made a decision to withhold numerous non-privileged documents which Mr. Gilman clearly has a right to review. The author of the responses also chose to assert boilerplate objections. The use of boilerplate objections is not permissible under Fed. R. Civ. P. 33. *Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co.*, 2008 U.S. Dist. LEXIS 106695, 13-14 (D. Colo. Mar. 21, 2008) (holding that, "Generalized objections that a discovery request is vague, overly broad or unduly burdensome are not acceptable and should be overruled."). Rule 34(b)(2)(B) of the Federal Rules of Civil Procedure states that a response to a document request "must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons." Neither of these standards allow for general objections. See *EEOC v. Outback Steakhouse of Fla., Inc.*, 251 F.R.D. 603, 608 (D. Colo. 2008) (holding that, "[T]he 'burden of showing that the requested discovery is objectionable falls on Defendants,' and it 'cannot be satisfied by merely asserting a boilerplate objection to discovery without providing concrete substantiation.'"). Target has failed to meet this burden and has instead asserted only boilerplate objections and non-detailed reasons. Accordingly, the Respondent's objections are evasive or incomplete responses, which are "a failure to disclose, answer, or respond." F.R.C.P. 37(a)(4).

The author of the discovery responses repeatedly made the improper objection that requests were "not relevant or reasonably calculated to lead to the discovery of admissible evidence." In response to requests for documents central to the case.

Responses to numerous specific requests for production are incomplete and amount to a failure to respond as explained below:

Interrogatory No. 3. For each person identified in response to Interrogatory No. 2 please identify any documents relied upon by him or any other information relied upon by him in making a recommendation to or reaching a decision to terminate Douglas Gilman's employment from Target Corporation.

In response to the foregoing Target elected to identify none of the documents relied upon by Miyamoto or Paup or Singleton, other than what is in the personnel file. Miyamoto claimed at her deposition that she relied upon store visit reports prepared by the District Team Lead, the FOS and the FQS. None of these were identified or produced. There is no reason why the documents relied upon could not have been disclosed in response to the interrogatory. The fact that defense counsel would prefer that Mr. Gilman rely upon a deposition answer isn't a proper objection. Target has failed to make the type of specific showing that would sustain an objection of "unduly burdensome." The objection is boilerplate.

Interrogatory No. 4. If any person identified in response to Interrogatory No. 2 relied on verbal information provided by another person in making a recommendation or in reaching a decision to terminate Douglas Gilman's employment from Target Corporation, please state the name of the person providing the information relied upon, the date or dates when the information was communicated, the names of all persons present when the information was communicated and a statement of all facts communicated by such person.

In response to the foregoing, Target elected to identify none of the verbal information purportedly relied upon by Miyamoto or Paup or Singleton. No verbal information conveyed to Miyamoto or Paup or Singleton is contained in the response. The fact that defense counsel would prefer that Mr. Gilman rely upon a deposition answer isn't a proper objection. There is no reason why the verbal information relied upon could not have been disclosed in response to the interrogatory. Target has failed to make the type of specific showing that would sustain an objection of "unduly burdensome." The objection is boilerplate.

Miyamoto claimed at deposition that she relied upon statements from LOD's and others concerning Mr. Gilman's attendance violations. She also claimed that she relied on complaints from numerous Target employees about the appearance of the Produce Department. Mr. Gilman has a right to know who the employees are who complained about his job performance and what each said. He isn't required to rely upon an "off the cuff" deposition response.

Interrogatory No. 5. Has any document including any electronic document related to this case been lost or destroyed by Target Corporation, since the termination of Douglas Gilman's employment? Documents related to the case include all documents including electronic documents containing information about the events leading to the termination of Mr. Gilman's employment as well as comparative performance and attendance information for all employees supervised by any person identified in response to Interrogatory No. 2. If so, please identify the document, state when it was last known to exist and give a full explanation of the circumstances of its loss or destruction.

The boilerplate objections made to this interrogatory are improper and should be withdrawn. Comparative performance data is central to the case and Mr. Gilman has a right to know whether it has been destroyed.

Request for Production No. 4. Please produce all documents, created, read or reviewed by any agent or employee of Target Corporation in order to evaluate Douglas Gilman's job performance from December 1, 2007 until December 31, 2008.

The objections made to this discovery request are boilerplate, improper (relevancy objection) unfounded (unduly burdensome) and should not have been asserted in response to this discovery request. It is obvious that the person who prepared the response made no attempt to gather documents relied upon by the decision makers in this case. The fact that some documents might be difficult to identify or retrieve doesn't excuse failing to produce any of the reports claimed to have been relied upon. **Ninety days have passed since the request for production of documents relied upon by decision makers and we have still not seen a single original District Team Leader store inspection report.**

Request for Production No. 5. Please produce all personnel rules, standards, policies and procedures of Target Corporation which may have applied to Douglas Gilman at any time during his employment.

Documents central to the case have been withheld based on improper objections. The objections made to this discovery request are boilerplate, improper (relevancy objection) unfounded (unduly burdensome) and should not have been asserted in response to this discovery request. If there was a genuine issue as to the meaning of this request, counsel should have conferred before deciding to produce nothing in response. **Ninety days have passed since this request for production of documents was made and we have still not seen policies related to attendance or discipline.** Target produced redacted versions of discipline policies without any proper assertion of privilege. Miyamoto admitted at her deposition that Target has attendance policies which she can access on Workbench. These were never produced.

Request for Production No. 8. Please produce all documents submitted to the United States Equal Employment Opportunity Commission in response to Douglas Gilman's complaint of discrimination including all correspondence and attachments.

Sanctions should be imposed for the boilerplate response to this request. This response is typical of the improper responses of Jackson Lewis in responding to these discovery requests. Please read it.

Request for Production No. 9. Please produce the attendance records for all employees of Target Corporation who were supervised by any person identified in response to interrogatory No. 2 including all records of leave accumulated and leave used from January 1, 2004 through the present.

Liza S. McKelvey
Ryan Lessmann
September 30, 2009
Page 5

Jackson Lewis didn't produce what was requested and raised improper and boilerplate objections. The documents should be produced now for Paup as well as her name was improperly omitted from the response to Interrogatory No. 2.

Jackson Lewis should amend its responses to the first set of discovery requests and make it clear that it is withdrawing the improper objections, provide responsive answers and produce the requested documents.

Please let me know by Friday, October 2, 2009, whether you will amend the responses and produce the requested documents.

Sincerely,

Donna Dell'Olio

Donna Dell'olio

From: Donna Dell'olio
Sent: Monday, October 19, 2009 7:15 PM
To: 'Lessmann, Ryan (DEN)'
Cc: McKelvey, Liza (DEN)
Subject: Gilman

Ryan,
In spite of the fact that we have requested production of all 26a documents you seem to be holding some back. Your Third Supplemental Disclosures dated Oct 2, 2009 suggests that you are waiting for me to make another request for reports. Please produce all reports now in complete and unredacted form.

All Target policies produced in incomplete or redacted form should have been produced in unredacted and complete form.

If you intend to produce requested documents please produce them now.

Sincerely,
Donna Dell'Olio

Donna Dell'Olio
Cornish & Dell'Olio
431 North Cascade Avenue
Colorado Springs, Colorado 80903
(719) 475 1204
(719) 475 1264 (fax)
ddellolio@cornishanddellolio.com

Donna Dell'olio

From: Lessmann, Ryan (DEN) [LessmannR@jacksonlewis.com]
Sent: Tuesday, October 20, 2009 1:03 PM
To: Donna Dell'olio
Cc: McKelvey, Liza (DEN)
Subject: RE: Gilman

Donna – I have been working with Target to gather additional documentation and will be producing such documentation in the near term. Thanks, Ryan

Please note new address

Ryan P. Lessmann
Attorney at Law
Jackson Lewis LLP
950 17th Street, Suite 2600
Denver, Colorado 80202

303.225.2418 | Direct
303.892.5575 | Fax

lessmannr@jacksonlewis.com

www.jacksonlewis.com

Representing management exclusively in workplace law and related litigation.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

From: Donna Dell'olio [mailto:ddellolio@cornishanddellolio.com]
Sent: Monday, October 19, 2009 7:15 PM
To: Lessmann, Ryan (DEN)
Cc: McKelvey, Liza (DEN)
Subject: Gilman

Ryan,

In spite of the fact that we have requested production of all 26a documents you seem to be holding some back. Your Third Supplemental Disclosures dated Oct 2, 2009 suggests that you are waiting for me to make another request for reports. Please produce all reports now in complete and unredacted form.

All Target policies produced in incomplete or redacted form should have been produced in unredacted and complete form.

If you intend to produce requested documents please produce them now.

Sincerely,

Donna Dell'Olio

Donna Dell'Olio
Cornish & Dell'Olio

431 North Cascade Avenue
Colorado Springs, Colorado 80903
(719) 475 1204
(719) 475 1264 (fax)
ddellolio@cornishanddellolio.com

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Donna Dell'Olio
Ian D. Kalmanowitz
Bradley J. Sherman

CORNISH AND DELL'OLIO
LAWYERS
431 NORTH CASCADE AVENUE
SUITE 1
COLORADO SPRINGS, COLORADO 80903-3378
TELEPHONE: (719) 475-1204
FAX: (719) 475-1264
ddellolio@cornishanddellolio.com

October 22, 2009

VIA FAX: 303 892-5575

Liza S. McKelvey

Ryan P. Lessmann

Jackson Lewis LLP

950 17th Street, Suite 2600

Denver, Colorado 80202

Email: mckelveyl@jacksonlewis.com; lessmannr@jacksonlewis.com

RE: *Gilman v. Target Corporation* 09-CV-00669-ZLW-KMT

Discovery Responses, Failure to Comply with F.R.C.P. 33, 34.

Dear Ms. McKelvey and Mr. Lessmann:

As you are aware, we have been attempting to obtain relevant documents in the above case since June, 2009. The initial requests for production of documents served in June and August were met with boilerplate objections and resulted in the production of Douglas Gilman's personnel file and an employee handbook and little else. On October 6, 2009 you produced attendance records and incomplete personnel policies. Responses to our Third and Fourth Sets of Requests for Production of Documents were met with boilerplate objections and no responsive documents.

The responses filed by your firm in this case to our Third Set of Requests for Production of Documents and Fourth Set of Requests for Production of Documents are completely nonresponsive. None of the requested documents were produced. Mr. Lessmann proposes to produce responsive documents at sometime in the future if he determines in the future that requested documents exist. Such responses are a violation of F.R.C.P. 34.

We are now approaching the end of the discovery period allowed by Magistrate Judge Tafoya and documents which should have been produced in response to our initial requests served in June have not been produced. We have been required to use our allowed requests for production to define with ever greater specificity the comparative performance reports which your client created and maintains. We hoped that by drawing very specific requests your firm would be motivated to obtain and produce requested documents. Instead, your firm responded with no requested

Liza S. McKelvey
Ryan P. Lessmann
October 22, 2009
Page 2

documents. See Defendant's Objections and Responses to Plaintiff's Third Set of Requests for Production served October 5, 2009 and Defendant's Objections and Responses to Plaintiff's Fourth Set of Requests for Production served October 20, 2009.

None of the comparative performance reports requested have been produced. No response has been made to Interrogatory No. 5 which would explain the failure to produce these reports.

Comparative Performance Reports

Plaintiff began the discovery process in June by requesting the following:

Request for Production No. 4. Please produce all documents, created, read or reviewed by any agent or employee of Target Corporation in order to evaluate Douglas Gilman's job performance from December 1, 2007 until December 31, 2008.

Plaintiff's First Set of Requests for Production, served June 23, 2009.

In response your firm asserted boilerplate objections and identified no responsive documents. Our next attempt to obtain comparative performance evidence was to specify for you the types of reports which Target publishes to evaluate performance of its produce departments. On August 31, 2009 we requested production of the following:

Request for Production No. 17. Please produce all Target peer comparison reports for the Produce Department for Target Location 1501 published to employees by Target in 2007 and 2008.

Request for Production No. 18. Please produce all Target productivity reports which include evaluation of Target Location 1501 Produce Department published to employees by Target in 2007 and 2008.

Request for Production No. 19. Please produce all reports published to employees by Target which evaluate order accuracy, guest service, and perishable performance by the Produce Department for Target Location 1501 for 2007 and 2008.

Plaintiff's Third Set of Requests for Production, served August 31, 2009:

It has now been nearly sixty days since these requests were served and none of the requested reports have been received.

On September 17, 2009 we requested the following:

Request for Production No. 21. Please produce all reports prepared by Target District Manager DM at the time of visit or following visit to store 1501 which report on his observations or conclusions, for entire store, created in 2007 - 2008.

Request for Production No. 22. Please produce all reports prepared by Target FQS and FOS at time of visit or following visit to store 1501 which report on observations or conclusions, for entire store, created in 2007 - 2008.

Request for Production No. 23. Please produce all scored reports for store 1501 prepared for the purpose of evaluating performance of Target Departments issued by Target for 2007 and 2008, as well as peer comparisons for scored reports for entire store, whether "scoring" is numerical or by color.

Plaintiff's Fourth Set of Requests for Production, served September 17, 2009.

We have delayed scheduling depositions to the prejudice of Mr. Gilman while we wait for the production of the comparative performance data.

Numerous reports were generated by Target and published to employees the purpose of which was to evaluate the performance of its departments and team leads. Many of the reports are directly relevant to Douglas Gilman's performance. Some of the reports which were published during Mr. Gilman's employment were:

1. Shrink reports published weekly, published electronically.
2. Order accuracy reports published weekly, published electronically.
3. Produce Department Guest Service Peer Comparisons published monthly, published electronically.

None of the foregoing has been produced, although requests for scored reports have been outstanding for almost 60 days. Your client is completely knowledgeable of all of the scored reports it creates and publishes relevant to the performance of its produce departments. It is obvious to me that compliance with the requirements of the Federal Rules of Civil Procedure in this case is a very low priority for Target Corporation.

In addition to the foregoing not a single District Manager Store Visits report has been produced. Incomplete summaries have been produced. These summaries are not an acceptable substitute for the original complete paper reports. The original paper reports are 8"x11" paper reports which were copied before the DTL left the store. As many as 10 copies of these reports were created and distributed within the store to the Executive Team. The foregoing information is known to your firm assuming a reasonable inquiry was made to locate the reports and produce them in response to our request for production. Similarly, not a single FQS and FOS report has been produced. As many as five copies of these reports were made at the store before FQS and FOS left the store. The claim that none of these reports now exist is not credible.

Personnel Policies

In June we requested:

Request for Production No. 5. Please produce all personnel rules, standards, policies and procedures of Target Corporation which may have applied to Douglas Gilman at any time during his employment.

Only a handbook and redacted policies were produced. The policies were actually produced in completely redacted form (as blank pieces of paper!)

We have also requested:

Request for Production No. 14. Please produce all Target procedures related to the use of sick leave, vacation leave, paid time off, or any other applicable leave program for employees of Target Location 1501.

Incomplete procedures related to unpaid leave of absences was produced. No personnel policies related to:

1. Accumulation of leave.
2. Use of sick leave.
3. Attendance policies generally, such as when absence or tardiness rises to an attendance violation, recommended discipline for attendance violations, reporting requirements, etc.

We can't proceed with depositions in this case until all personnel policies have been produced. Please produce all scored reports as requested in our requests for production and all personnel policies by the close of business Monday, October 26, 2009.

Liza S. McKelvey
Ryan P. Lessmann
October 22, 2009
Page 5

Please advise me of all days you have available between November 11, 2009 and November 24, 2009 for completion of depositions. We will require 3 full days for completion of depositions.

We intend to file a motion to compel and to seek additional discovery on spoliation if the documents requested have not been produced by the close of business Monday, October 26, 2009.

I will make myself available by telephone to discuss issues related to production of these documents on Monday, October 26, 2009, between 10:00 a.m. and 12:00 p.m. If that time is not available to you for a telephone conference please advise me and I will make myself available on the weekend or after hours to confer on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Dell'Olio". The signature is fluid and cursive, with a large initial "D" and a stylized "Dell'Olio".

Donna Dell'Olio

Donna Dell'olio

From: Lessmann, Ryan (DEN) [LessmannR@jacksonlewis.com]
Sent: Monday, October 26, 2009 11:46 AM
To: Donna Dell'olio
Cc: McKelvey, Liza (DEN); Roman, Joanna (DEN); Trujillo, Brenda (DEN)
Subject: Gilman - Target

Donna –

I trust that you received Target's Fourth Supplemental Disclosures last Thursday, which included production of a substantial number of documents referenced or requested in your October 22 letter. By the close of business today or tomorrow, I will prepare correspondence to you regarding any remaining issues you raised and, at that time, welcome the opportunity to discuss over the telephone to the extent necessary.

With regard to the remaining depositions you wish to conduct, can you please let me know who they are so that I can work with Target to schedule them? I cannot tell you which days Target has available from November 11 to November 24 to conduct depositions without knowing who you wish to depose.

Thanks, Ryan

Please note new address

Ryan P. Lessmann
Attorney at Law
Jackson Lewis LLP
50 17th Street, Suite 2600
Denver, Colorado 80202

303.225.2418 | Direct
303.892.5575 | Fax

lessmannr@jacksonlewis.com

www.jacksonlewis.com

Representing management exclusively in workplace law and related litigation.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Esther Abramson

From: Donna Dell'olio
Sent: Monday, October 26, 2009 1:44 PM
To: 'Lessmann, Ryan (DEN)'
Cc: McKelvey, Liza (DEN); Esther Abramson
Subject: RE: Gilman - Target

Ryan,
As you know, the Fourth Supplemental Disclosures only contained summaries of "Food Safety Assessments" and "Food Safety Compliance Assessments."

This is a very small part of the scored reports published by Target pertaining to the Produce Department and not particularly helpful.

Almost all the scored reports requested were published electronically, the claim that they don't exist or can't be located isn't credible.

I have listed for you multiple times the names of the scored reports we are seeking. You have completely ignored our specific requests contained in our RFP and my correspondence.

I attempted to confer by providing a two hour window for a telephone conversation this morning with you or Liza. Neither of you called me back. I also offered to make myself available by phone after hours or on the weekend. Neither of you responded to my offer.

You seem to be too busy with other cases to focus on the discovery requirements in this case.

I have to assume that the discovery omissions are intentional. No explanation has been provided for failing to produce the scored reports and the personnel policies.

Motions to compel are very time consuming and we will expect to be paid by Target for our work.

I intend to begin work on our motion to compel today. If you want to confer and aren't available during the day, you can call my office and arrange a time to speak to me in the evening.

Please let me know your availability for depositions between Nov 11th and Nov 24 so that we can set aside those days you are available. I will provide you with the names of witness by the end of the week.

Sincerely,
Donna Dell'Olio

From: Lessmann, Ryan (DEN) [mailto:LessmannR@jacksonlewis.com]
Sent: Monday, October 26, 2009 11:46 AM
To: Donna Dell'olio
Cc: McKelvey, Liza (DEN); Roman, Joanna (DEN); Trujillo, Brenda (DEN)
Subject: Gilman - Target

Donna --

I trust that you received Target's Fourth Supplemental Disclosures last Thursday, which included production of a substantial number of documents referenced or requested in your October 22 letter. By the close of

business today or tomorrow, I will prepare correspondence to you regarding any remaining issues you raised and, at that time, welcome the opportunity to discuss over the telephone to the extent necessary.

With regard to the remaining depositions you wish to conduct, can you please let me know who they are so that I can work with Target to schedule them? I cannot tell you which days Target has available from November 11 to November 24 to conduct depositions without knowing who you wish to depose.

Thanks, Ryan

Please note new address

Ryan P. Lessmann
Attorney at Law
Jackson Lewis LLP
950 17th Street, Suite 2600
Denver, Colorado 80202

303.225.2418 | Direct
303.892.5575 | Fax

lessmannr@jacksonlewis.com

www.jacksonlewis.com

Representing management exclusively in workplace law and related litigation.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Donna Dell'olio

From: Donna Dell'olio
Sent: Monday, October 26, 2009 1:44 PM
To: 'Lessmann, Ryan (DEN)'
Cc: McKelvey, Liza (DEN); Esther Abramson
Subject: RE: Gilman - Target

Ryan,
As you know, the Fourth Supplemental Disclosures only contained summaries of "Food Safety Assessments" and "Food Safety Compliance Assessments."

This is a very small part of the scored reports published by Target pertaining to the Produce Department and not particularly helpful.

Almost all the scored reports requested were published electronically, the claim that they don't exist or can't be located isn't credible.

I have listed for you multiple times the names of the scored reports we are seeking. You have completely ignored our specific requests contained in our RFP and my correspondence.

I attempted to confer by providing a two hour window for a telephone conversation this morning with you or Liza. Neither of you called me back. I also offered to make myself available by phone after hours or on the weekend. Neither of you responded to my offer.

You seem to be too busy with other cases to focus on the discovery requirements in this case.

I have to assume that the discovery omissions are intentional. No explanation has been provided for failing to produce the scored reports and the personnel policies.

Motions to compel are very time consuming and we will expect to be paid by Target for our work.

I intend to begin work on our motion to compel today. If you want to confer and aren't available during the day, you can call my office and arrange a time to speak to me in the evening.

Please let me know your availability for depositions between Nov 11th and Nov 24 so that we can set aside those days you are available. I will provide you with the names of witness by the end of the week.

Sincerely,
Donna Dell'Olio

From: Lessmann, Ryan (DEN) [mailto:LessmannR@jacksonlewis.com]
Sent: Monday, October 26, 2009 11:46 AM
To: Donna Dell'olio
Cc: McKelvey, Liza (DEN); Roman, Joanna (DEN); Trujillo, Brenda (DEN)
Subject: Gilman - Target

Donna –

I trust that you received Target's Fourth Supplemental Disclosures last Thursday, which included production of a substantial number of documents referenced or requested in your October 22 letter. By the close of

business today or tomorrow, I will prepare correspondence to you regarding any remaining issues you raised and, at that time, welcome the opportunity to discuss over the telephone to the extent necessary.

With regard to the remaining depositions you wish to conduct, can you please let me know who they are so that I can work with Target to schedule them? I cannot tell you which days Target has available from November 11 to November 24 to conduct depositions without knowing who you wish to depose.

Thanks, Ryan

Please note new address

Ryan P. Lessmann
Attorney at Law
Jackson Lewis LLP
950 17th Street, Suite 2600
Denver, Colorado 80202

303.225.2418 | Direct
303.892.5575 | Fax

lessmannr@jacksonlewis.com

www.jacksonlewis.com

Representing management exclusively in workplace law and related litigation.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system. Thank you.