

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| DR. HODA ELEMARY,              | ) |                                |
|                                | ) |                                |
| Plaintiff,                     | ) |                                |
|                                | ) |                                |
| v.                             | ) | CIVIL ACTION NUMBER: CV-07-654 |
|                                | ) |                                |
| PHILIPP HOLZMANN A.G., et al., | ) |                                |
|                                | ) |                                |
| Defendants.                    | ) |                                |

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
BILL L. HARBERT'S MOTION TO COMPEL DISCLOSURE**

Pursuant to Fed. R. Civ. P. 37(a)(3)(A) and Local Rules 7(a) and 26(a)(2), Defendant and Counter-Plaintiff Bill L. Harbert, Sr. (“Mr. Harbert”) hereby submits this Memorandum of Points and Authorities in support of his motion for an order compelling Plaintiff and Counter-Defendant Hoda Elemary (“Elemary”) to provide the initial disclosures required by Fed. R. Civ. P. 26(a)(1)(A) within ten calendar days of the Court’s order granting his motion. Mr. Harbert also asks requests that the Court award any further relief that it may deem just and proper.

**STATEMENT OF FACTS**

The Court entered a Scheduling Order in this case on August 18, 2008. That Order required the parties to make their initial disclosures by August 29, 2008. (Doc. 53, pg. 1.) Mr. Harbert timely served his initial disclosures. On September 3, 2008, undersigned counsel sent a letter to Elemary requesting receipt of her initial disclosures by September 8, 2008. A true and correct copy of that letter is attached hereto as Exhibit A.

In response, Elemary contacted undersigned counsel by telephone and requested that she be allowed until September 10, 2008, to serve her initial disclosures. Undersigned counsel

consented to this additional time and sent another letter, a true and correct copy of which is attached hereto as Exhibit B, confirming this new deadline. However, Elemery failed to serve her initial disclosures before the deadline. Instead, on September 11, 2008, undersigned counsel received by fax from Elemery her “Initial Response to Scheduling Order of August 18, 2008” (the “Initial Response”), a true and correct copy of which is attached hereto as Exhibit C. Elemery also faxed 105 pages of documents contemporaneously with the Initial Response.

On the same day as she sent the Initial Response, Elemery spoke to undersigned counsel by telephone. During that conversation, Elemery conceded that she had neither sent nor provided a description by category and location of all of the documents that Rule 26 requires her to disclose. She also indicated that she would provide a supplementation to her Initial Response by September 15, 2008. Undersigned counsel sent a letter to Elemery on September 11, 2008, describing the deficiencies in her Initial Response and confirming the statements made by Elemery during that day’s telephone conversation. A true and correct copy of that letter is attached hereto as Exhibit D.

Despite her promises, Elemery failed to provide any supplementation on September 15. On September 16, 2008, she again spoke to undersigned counsel by telephone. She reiterated her concession that she has not complied with the requirements of Rule 26. She stated that she has been too busy with her employment to fulfill her duty to comply with that rule. She further represented that she is endeavoring to do so but could not provide a definitive date by which she would comply.

## **ARGUMENT**

In its present state, Elemery’s Initial Response is utterly incomplete and does not comply with the requirements of Rule 26(a)(1)(A). Accordingly, pursuant to Fed. R. Civ. P. 37(a)(4),

this incomplete disclosure constitutes a failure to disclose. Elemary's initial disclosures are incomplete for a number of reasons, many of which are detailed in Exhibit D hereto. Those reasons include, but are not limited to:

- a. the failure to disclose the names of a number of persons who are referenced in the Initial Response, such as unnamed "members of Congress and Middle East governments with whom Plaintiff formerly conducted her business" (Exhibit C, pg. 3), as well as a number of persons named or referred to in her Complaint in this case;
- b. the absence of any addresses or telephone numbers for the persons who are named, as required by Rule 26(a)(1)(A)(i);
- c. Elemary's admitted failure to provide or describe all of the documents that the rules require, including, significantly, her failure to provide any of the numerous tape recordings regarding the issues in this case that she has on multiple occasions claimed to possess; and
- d. the absence of any computation of damages for Elemary's alleged injuries.

An order requiring Elemary to make her initial disclosures as required by the Federal Rules of Civil Procedure within ten calendar days is justified in this case. Elemary has missed two dates – beyond the Court-ordered deadline in the Scheduling Order – by which she promised to provide initial disclosures that comply with the Rules. On both occasions she failed to comply with those deadlines. The Initial Response she eventually provided is incomplete in most, if not all, respects.

Ten days from the Court's order on this motion is more than sufficient time for Elemary to provide the required disclosures. The discovery cutoff in this case is December 1, 2008. Mr.

Harbert needs Elemetry's disclosures to proceed with certain aspects of discovery in this case that must be conducted over the next ten weeks. Having chosen to file this action, Elemetry cannot be allowed to say that she is too busy to comply with her obligations under Rule 26.

Accordingly, for the reasons set forth in this Memorandum, Bill L. Harbert, Sr. respectfully requests that Court enter an order compelling Hoda Elemetry to make initial disclosures in full compliance with Fed. R. Civ. P. 26(a)(1) within ten calendar days of that order, and for such further relief as the Court deems just and proper.

Dated: September 16, 2008

/s/ Matthew H. Lembke

Matthew H. Lembke

(admitted *pro hac vice*)

BRADLEY ARANT ROSE & WHITE LLP

One Federal Place

1819 Fifth Avenue North

Birmingham, AL 35203

Tel: (205) 521-8000

Fax: (205) 521-8800

Email: mlembke@bradleyarant.com

*Of Counsel:*

Roger S. Goldman

(D.C. Bar No. 333294)

LATHAM & WATKINS LLP

555 11th Street, N.W.

Suite 1000

Washington, D.C. 20004

Tel: (202) 637-2200

Fax: (202) 637-2201

Email: roger.goldman@lw.com

Attorneys for Defendant Bill L. Harbert, Sr.

**CERTIFICATE OF SERVICE**

I, Matthew H. Lembke, hereby certify that on this 16th day of September, 2008, I caused a true and correct copy of Bill L. Harbert, Sr.'s Motion to Compel Disclosure to be served, via Federal Express, upon the following:

Hoda Elemary  
21 Le Conte  
Laguna Niguel, California 92677

/s/ Matthew H. Lembke  
Matthew H. Lembke