

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 10-CIV-20718-COOKE/BANDSTRA

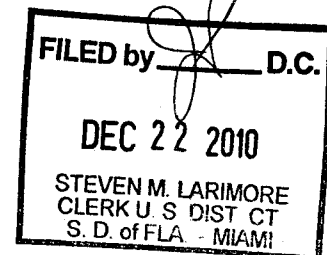
ALBERT SEGAL, and
MARIANNA CHAPAROVA,

Plaintiffs,

- vs. -

AMAZON.COM, INC.,

Defendant.



PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs, Albert Segal and Marianna Chaparova ("Plaintiffs"), on their own behalf and pursuant to Rule 37 of the Federal Rules of Civil Procedure, hereby file their Motion to Compel Production of Documents against the Defendant, Amazon.com, Inc. ("Amazon"), and as grounds state:

I. BACKGROUND

Plaintiffs' Amended Complaint alleges seven causes of action: violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) (Count 1); Fraud and/or Fraud in the Inducement (Count 2); Conversion (Count 3); Unjust Enrichment (Count 4); Tortious Interference with Business Relationships (Count 5); Negligent Misrepresentation (Count 6); and Breach of Fiduciary Duty and Constructive Fraud (Count 7) [D.E. 22].

On October 11, 2010, Plaintiffs e-mailed Amazon's counsel, requesting that Amazon make the necessary disclosures and produce relevant documents, as required by Rule 26(a) of the Federal Rules of Civil Procedure, by October 25, 2010. A copy of that e-mail is attached hereto as "Exhibit 1." Amazon's counsel never responded to the Plaintiffs' request of October 11th.

On November 4, 2010, Plaintiffs requested, in a more formal request for production of documents, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that Amazon produce documents/materials relevant to the claims and defenses of this case. For example, Plaintiffs requested copies of documents that relate to Amazon's decision to withhold funds, as well as bank records for the accounts Amazon owns and/or uses to handle those funds. A copy of that request is attached hereto as "Exhibit 2."

On December 4, 2010, one full month after receiving the Plaintiffs' request for production and without having produced a single document, Amazon's counsel e-mailed Plaintiffs Amazon's objections to providing clearly relevant information as "irrelevant," "overbroad," "unduly burdensome," "not reasonably calculated to lead to the discovery of admissible evidence," and on the ground that the Request seeks "proprietary and commercially sensitive internal information and or information protected by the attorney/client privilege or the work product doctrine." To date, Amazon has not specifically identified any such documents, and has not provided its "privilege log." A copy of Amazon's responses and objections are attached hereto as "Exhibit 3."

Since receiving Amazon's objections, Plaintiffs have gone out of their way to persuade Amazon to comply with the discovery rules in a genuine effort to avoid unnecessarily burdening the Court, by way of the following correspondence: In fact, Plaintiffs e-mailed Amazon repeatedly, expressing a genuine willingness to negotiate with Amazon on the details of their request provided that Amazon cooperate in good faith so that this issue could be resolved promptly. On December, Plaintiffs e-mailed Amazon's counsel a much narrower request, with specific references to the Plaintiffs' Amended Complaint. A copy of that e-mail is attached hereto as "Exhibit 4."

On December 10, 2010, Amazon's counsel decided to make a mockery of the discovery process by producing copies of the same exact documents that Plaintiffs had produced, without producing any new documents or any of the documents that Amazon was specifically asked to produce, and should have produced on its own.

II. ARGUMENT

Rule 37 of the Federal Rules of Civil Procedure provides that, “[i]f a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.” The purpose of the initial disclosures of Rule 26(a)(1) is to require the parties to immediately share those documents readily available that support their claims or defenses. Plaintiffs have provided Amazon with over four hundred (400) pages of documents that Plaintiffs intend to use to support their claims in this case. Plaintiffs produced these documents voluntarily, pursuant to Rule 26(a). Amazon, on the other hand, has employed stonewalling tactics to hamper the Plaintiffs' discovery efforts. Plaintiffs' document requests are narrowly drafted and are purposed to seek documents and information that are highly relevant to the allegations in the Amended Complaint, the proposed relief, and Amazon's defenses.

Amazon has not denied, and cannot deny that it systematically withholds funds in excess of the length of time it takes to resolve disputes. Interestingly enough, Amazon's counsel has produced documents, identical to the ones produced by Plaintiffs, that document discussions of persons who, like Plaintiffs, were denied access to their own money and had their accounts closed without any justification, which Amazon's counsel has produced after arguing that such information is irrelevant. Amazon, however, has not produced any new documents that have not been previously produced by Plaintiffs themselves.

The Court should broadly interpret whether evidence is relevant. *See, e.g., Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.12 (1978) (quoting 4 J. Moore, Federal Practice § 26.96[1], at 26-131 n.34 (2d ed. 1976)). Here, Plaintiffs have gone out of their way to limit their requests for production of documents to the most relevant documents, as evidenced by the Plaintiffs' correspondence with Amazon's counsel, copies of which are attached hereto as "Exhibit 5."

Plaintiffs' e-mail of December 8, 2010 (attached hereto as Exhibit 6), illustrates the extent to which Plaintiffs were willing to narrow down, with specific instruction, the time and scope of the requested documents, such as:

(1) Production of documents that relate to our claim that Amazon is systematically withholding its seller-customers' funds for reasons unrelated to their performance as sellers on Amazon.com (see, e.g., Am. Compl., ¶¶ 33-35, 47-50); documents that relate to our claim regarding Amazon's fraudulent intent (see, e.g., Am. Compl. ¶¶ 56-84):

- (a) any documents that relate to those customers whose funds were withheld from them (not disbursed to them) in excess of thirty (30) days during 2008-2010;
- (b) any and all documents that relate to those seller-customers whose accounts were suspended or terminated (those customers who were prohibited from selling on Amazon.com) during 2008-2010;
- (c) any and all documents that relate to Amazon's seller-customers' disputes (disagreement expressed by Amazon's seller-customers over Amazon's decision not to disburse the funds in their "Amazon Seller Account") in re to Amazon's decision to withhold their funds for at least thirty (30) days during 2008-2010; and
- (d) any and all documents Amazon intends to use to defend itself against the above specified claims.

(2) Production of documents that relate to our claim that Amazon has pocketed and continues to pocket ill-gotten profits as a direct result of its systematic practice of withholding the sellers' funds for extended periods of time (see, e.g., Am. Compl. ¶¶ 68-84, 91-98):

- (a) Amazon's financial records for 2008-2010, including bank statements for accounts it owns or uses to handle the funds it withholds from its seller-customers (funds that it does not disburse to its seller customers) for a period of thirty (30) days or longer (these documents cannot be obtained from Amazon's SEC filings);

- (b) Amazon's financial records, including bank statements for accounts it used to handle our funds during the months of November 2009 - May 2010; and
- (c) any and all documents Amazon intends to use to defend itself against the above specified claims and all other claims in our Am. Compl..

As to Amazon's privilege claims, Plaintiffs requested that Amazon provide the following information for each such document in a "privileged documents log" or similar format:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the author(s) of the document;
- (e) the addressee(s) and any other recipient(s) of the document; and
- (f) the custodian of the document, where applicable.

Amazon, however, again refused to produce any of the requested documents and, to date, the "privilege log" has not been produced either. Moreover, Amazon still has not identified a single attorney-client communication created or maintained for the purpose of securing or rendering legal advice.

It is well established that the party asserting a privilege has the burden of proving any such privilege. *See, e.g., Dorf & Stanton Communications, Inc. v. Molson Breweries*, 100 F.3d 919, 922 (Fed. Cir. 1996); *Continental Coatings Corp. v. Metco, Inc.*, 50 F.R.D. 382, 384 (N.D. Ill. 1970). The Federal Rules of Civil Procedure require that a party's claim of privilege shall be made expressly and "supported by a description of the nature of documents . . . that is sufficient to enable the demanding party to contest the claim." Rule 45(d)(2) of the Federal Rules of Civil Procedure. A party asserting a privilege exemption from discovery bears the burden on demonstrating its applicability. *See In re Santa Fe Internl Corp.*, 272 F.3d 705, 710 (5th Cir.2001); *United States v. Landof*, 591 F.2d 36 (9th Cir. 1978) (holding that the party objecting to discovery on the basis of privilege has the burden of establishing the existence of a privilege). Amazon's failure to produce its "privilege log" should be considered a waiver of any such privilege.

As noted by the United States Supreme Court, privileges “are not lightly created nor expansively construed for they are in derogation of the search for truth.” *United States v. Nixon*, 418 U.S. 683, 710 (1974); *see also American Civil Liberties Union of Mississippi, Inc. v. Finch*, 638 F.2d 1336, 1344 (5th Cir. 1981) (holding that privileges are strongly disfavored in federal practice). Under Rule 26 of the Federal Rules of Civil procedure, there is a broad policy which favors full disclosure of facts during discovery. *Wei v. Bodner*, 127 F.R.D. 91, 95-96 (D.N.J. 1989). By its ongoing actions, Amazon has willfully undermined this very process.

As for Amazon’s contention that the Plaintiffs’ requests are somehow irrelevant, relevancy means that the evidence “appears reasonably calculated to lead to the discovery of admissible evidence.” Rule 26(b)(1) of the Federal Rules of Civil Procedure; *see also Coleman v. Am. Red Cross*, 23 F.3d 1091, 1097 (6th Cir. 1994); *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.12 (1978) (noting that relevancy of the evidence is to be interpreted broadly) (quoting 4 J. Moore, *Federal Practice* § 26.96[1], at 26-131 n.34 (2d ed. 1976)); *Schlagenhauf v. Holder*, 379 U.S. 104, 114-15 (1964) (noting that discovery should be “both broad and liberal”) (citing *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)); *Procter & Gamble*, 1958, 78 S.Ct. 983, 986-987, 356 U.S. 677, 682-683, 2 L.Ed.2d 1077 (stating that discovery is intended to make a trial “less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent”). Plaintiffs’ requests relate specifically to the causes of action in the operative complaint, with detailed references to the claims for every request and are, therefore, anything but “irrelevant” or “overbroad.”

Moreover, Amazon’s argument that it would somehow be burdened if it had to produce the requested documents is without merit. Undoubtedly, Amazon stores its documents

electronically, and it would require minimal effort on Amazon's part to also produce those documents electronically.

III. REQUESTED RELIEF

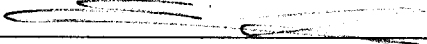
Plaintiffs' are entitled to obtain relevant information needed to prepare their case and, unfortunately, are forced to ask the Court to order Amazon to produce such information. Therefore, Plaintiffs respectfully ask the Court to issue an Order compelling Amazon to produce documents responsive to the Plaintiffs requests for production of documents as set forth above within ten (10) days, and any other relief the Honorable Court deems just and proper.

LOCAL RULE 7.1(A)(3) CERTIFICATION

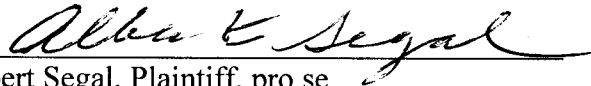
Pursuant to Local Rule 7.1 (A)(3), Plaintiffs certify that they have conferred with Amazon's counsel of record in a good faith effort to resolve the issues raised in this motion, and that the parties were unable to reach an agreement on the issues raised in this motion.

This 18th day of December, 2010.

Respectfully submitted,



Marianna Chaparova, Plaintiff, *pro se*
E-mail: manach101@yahoo.com



Albert Segal, Plaintiff, *pro se*
10490 S.W. 12th Terr., #202
Miami, FL 33174
E-mail: alby1969_98@yahoo.com

CERTIFICATE OF SERVICE

This is to certify that Plaintiffs, Albert Segal and Marianna Chaparova, have this day served upon Amazon's counsels of record the foregoing motion to compel production of documents, via the electronic mail and/or standard U.S. mail.

This 18th day of December, 2010.

Respectfully submitted,


MARIANNA CHAPAROVA, Plaintiff, *pro se*


ALBERT SEGAL, Plaintiff, *pro se*

MAILING LIST

Carlton Fields, P.A.
City Place Tower, Suite 1200
525 Okeechobee Blvd.
West Palm Beach, Florida 33401

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 10-CIV-20718-COOKE/BANDSTRA

ALBERT SEGAL, and
MARIANNA CHAPAROVA,

Plaintiffs,

- vs. -

AMAZON.COM, INC.,

Defendant.

[Proposed] ORDER GRANTING MOTION TO COMPEL

On _____, Plaintiffs filed a motion to compel Defendant Amazon.com, Inc. (“Amazon”) to produce documents as requested by the Plaintiffs’ document requests.

IT IS HEREBY ORDERED that the motion to compel is GRANTED. Amazon shall produce such information within ten (10) days from the date of this Order.

ORDERED:

Marcia G. Cooke
United States District Judge

Dated:

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of record

Exhibit 1

From: alex siegal <alby1969_98@yahoo.com>

To: desau@carltonfields.com

Sent: Mon, October 11, 2010 8:58:48 PM

Subject: RE: Segal/Chaparova vs. Amazon.com, Inc. (Case No. 10-cv-20718), Production of Documents (follow-up email)

Mr. Esau –

We have not yet received from you any of the documents that you are required to produce on your own, pursuant to FRCP 26, such as documents identified in your initial disclosures, Amazon's bank account statements - specifically for the account(s) that Amazon used to handle our funds during the months of November 2009 through May 2010, and all other documents, electronically stored information, and tangible things that are relevant to the claims raised in our Amended Complaint, to your defenses, etc. These documents/materials should be emailed to us by October 25, 2010. Thank you.

Sincerely,

Albert Segal

Exhibit 2

Re: Segal/Chaparova v. Amazon.com (Case No. 10-cv-20718, U.S. District Court for the Southern District of Florida)

From: alex siegal <alby1969_98@yahoo.com>

Add to Contacts

To: "Esau, David B." <desau@carltonfields.com>

RE: Segal/Chaparova vs. Amazon.com, Inc. (Case No.: 10-cv-20718, U. S. District Court for the Southern District of Florida)

PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

We, the Plaintiffs in the above-referenced case, hereby request production of the following documents that relate to this case for each of the past three (3) calendar years ending in 2010, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP"):

Copies of any and all internal company correspondence, including, memos, letters, notes, emails (in their original form), and all other documents that relate to the Amazon's "Participation Agreement";

Copies of any and all training and operation manuals, and all other pertinent information given to any person responsible for corresponding with the Amazon's Seller-Customers;

Copies of any and all company correspondence, including, memos, letters, notes, emails (in their original form), and all other documents that relate to Amazon's decision to withhold/reserve its customers' funds, suspend its customers' listings and/or terminate its customers' accounts;

Copies of any and all complaints from Amazon's Seller-Customers and documents related to Amazon's responses to those complaints (personal information may be redacted);

Copies of any and all financial records, including a complete accounting of all funds that have been withheld/reserved by Amazon from its Seller-Customers for any reason;

Any and all other documents identified in Amazon's "Initial Disclosures" that to date have not been produced; and

Any and all other documents, electronically stored information, and tangible things that are relevant to the claims raised in the Plaintiffs' Amended Complaint, to Amazon's defenses, etc.

These documents/materials should be emailed to us within thirty (30) days from the date of this request, and shall be in accordance with the Instructions and Definitions set forth below and FRCP 34.

INSTRUCTIONS AND DEFINITIONS:

- (a) Whenever reference is made to a person, it includes any and all of such person's principals, employees, agents, attorneys, consultants and other representatives.

- (b) In the event that Amazon is able to provide only part of the document(s) called for in any particular Request for Production, provide all documents that Amazon is able to provide and state the reason, if any, for the inability to provide the remainder.
- (c) "Document(s)" means all materials within the full scope of FRCP 34, including but not limited to: all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including but without limitation to, email and attachments, correspondence, memoranda, notes, diaries, minutes, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, telegrams, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, meetings or printouts, teletypes, telefaxes, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind.
- (d) If any document is withheld from production under a claim of privilege or other exemption from discovery, state the title and nature of the document, and furnish a list signed by the attorney of record giving the following information with respect to each document withheld:
- (i) the name and title of the author and/or sender and the name and title of the recipient;
 - (ii) the date of the document's origination;
 - (iii) the name of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the document);
 - (iv) the name and position, if any, of each person to whom the contents of the documents have been communicated by copy, exhibition, reading or substantial summarization;
 - (v) a statement of the specific basis on which privilege is claimed and whether or not the subject matter or the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice; and
 - (vi) the identity and position, if any, of the person or persons supplying the attorney signing the list with the information requested in subparagraphs above.
- (e) Every Request for Production herein shall be deemed a continuing Request for Production, and Amazon is to supplement its answers promptly if and when Amazon obtains responsive documents which add to or are in any way inconsistent with Amazon's initial production.
- (f) These discovery requests are not intended to be duplicative. All requests should be responded to fully and to the extent not covered by other requests.

Please confirm that you have received this request. Thank you.

Sincerely,

Albert Segal

11/4/2010

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CIV-20718-COOKE/BANDSTRA

ALBERT SEGAL, and
MARIANNA CHAPAROVA,

Plaintiffs,

- vs. -

AMAZON.COM, INC.,

Defendant.

_____ /

**DEFENDANT AMAZON.COM, INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant Amazon.com, Inc. ("Amazon") hereby serves its response and objections to Plaintiffs' First Request for Production of Documents and Things ("Requests"):

General Objections Applicable to All Requests

1. Amazon objects to the Requests on the ground and to the extent that they are overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that they seek documents covering all of the years 2008, 2009, and 2010 despite the fact that all of the claims and conduct alleged in the Amended Complaint stem from a purported Amazon seller account established by Plaintiffs in November 2009. *See* Amended Complaint, at 9.

2. Amazon objects to the Requests on the ground and to the extent that they seek information related to other customers, especially inasmuch as such documents are not reasonably calculated to lead to the discovery of admissible evidence with respect to the well-plead claims and defenses of the parties in this case.

3. Amazon objects to the Requests on the ground and to the extent that they seek information protected by the attorney/client privilege or the work product doctrine. Since many (if not all) of the Requests are wildly overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected documents without substantial undue burden, and will provide a privilege log when and if necessary and after its objections are ruled upon.

Specific Responses and Objections

Request for Production Number 1: Copies of any and all internal company correspondence, including memos, letters, notes, emails (in their original form), and all other documents that relate to the Amazon's "Participation Agreement."

Response to Request for Production Number 1: Amazon objects to this Request on the ground and to the extent that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that the Request appears to seek every single piece of paper and every single electronic record in Amazon's possession that relates in any way to the Amazon "Participation Agreement" regardless of whether these documents have anything to do whatsoever with the claims or defenses framed by the well-plead pleadings in this case, and regardless of whether the documents have anything to do with the Plaintiffs in this case. As framed, this Request could include literally millions of pages of documents. Amazon also objects to this Request on the ground and to the extent that it seeks information protected by the attorney/client privilege and/or the work product doctrine, but because the Request is so wildly overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected documents (or responsive documents), and will provide a privilege log when and if necessary and after its objections are ruled upon. Notwithstanding these objections, Amazon will make certain documents related to Plaintiffs' Amazon Marketplace account and correspondence

regarding that account available for inspection and copying at a mutually convenient time and place.

Request for Production Number 2: Copies of any and all training and operation manuals, and all other pertinent information given to any person responsible for corresponding with the Amazon's Seller-Customers.

Response to Request for Production Number 2: Amazon objects to this Request on the ground and to the extent that it is vague, ambiguous, unclear, and overbroad with respect to the phrases "all other pertinent information" and "given to any person" and "responsible for corresponding with the Amazon's Seller-Customers." Amazon also objects to this Request on the ground and to the extent that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks information that is not relevant to the claims or defenses framed by the well-plead pleadings in this case. Amazon also objects to this Request on the ground and to the extent that it seeks proprietary and commercially sensitive internal information and/or information protected by the attorney/client privilege or the work product doctrine. Because the Request is so overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected documents, and will provide a privilege log when and if necessary and after its objections are ruled upon.

Request for Production Number 3: Copies of any and all company correspondence, including memos, letters, notes, emails (in their original form), and all other documents that relate to Amazon's decision to withhold/reserve its customers' funds, suspend its customers' listings and/or terminate its customers' accounts.

Response to Request for Production Number 3: Amazon objects to this Request on the ground and to the extent that it is vague, ambiguous, and overbroad with respect to the phrase “Amazon’s decision to withhold/reserve its customers’ funds.” Amazon also objects to this Request on the ground and to the extent that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that the Request appears to seek every single piece of paper and every single electronic record in Amazon’s possession that relates in any way to any decision by Amazon to withhold funds or suspend or terminate any account of any customer of Amazon, regardless of whether these documents have anything to do whatsoever with the claims or defenses framed by the well-plead pleadings in this case, and regardless of whether the documents have anything to do with the Plaintiffs in this case. Similarly, Amazon also objects to this Request because it appears to seek information related to Amazon’s other customers, none of whom have any material interest in this case, and none of whom possess facts that are relevant to the Plaintiffs’ claims in this case. Amazon also objects to this Request on the ground and to the extent that it seeks information protected by the attorney/client privilege and/or the work product doctrine, but because the Request is so wildly overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected documents (or responsive documents), and will provide a privilege log when and if necessary and after its objections are ruled upon. Notwithstanding these objections, Amazon will make certain documents related to Plaintiffs’ Amazon Marketplace account and correspondence regarding that account available for inspection and copying at a mutually convenient time and place.

Request for Production Number 4: Copies of any and all complaints from Amazon’s Seller-Customers and documents related to Amazon’s responses to those complaints (personal information may be redacted).

Response to Request for Production Number 4: Amazon objects to this Request on the ground and to the extent that it is vague, ambiguous, and overbroad with respect to the terms “complaints” and “responses.” Amazon also objects to this Request on the ground and to the extent that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that the Request appears to seek documents that have nothing to do with the claims or defenses framed by the well-plead pleadings of the parties in this case, and regardless of whether the documents have anything to do with the Plaintiffs in this case. Similarly, Amazon also objects to this Request because it appears to seek information related to certain of Amazon’s other customers, none of whom have any material interest in this case, and none of whom possess facts that are relevant to the Plaintiffs’ claims in this case. Amazon also objects to this Request on the ground and to the extent that it seeks information protected by the attorney/client privilege and/or the work product doctrine, but because the Request is so wildly overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected documents (or responsive documents), and will provide a privilege log when and if necessary and after its objections are ruled upon.

Request for Production Number 5: Copies of any and all financial records, including a complete accounting of all funds that have been withheld/reserved by Amazon from its Seller-Customers for any reason.

Response to Request for Production Number 5: Amazon objects to this Request on the ground and to the extent that it is vague, ambiguous, and overbroad with respect to the phrases “financial records” and “complete accounting.” Amazon also objects to this Request on the ground and to the extent that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that the Request appears to seek documents that have nothing to do with the claims or defenses framed by the well-plead pleadings of the parties in this case, and regardless of whether the documents have anything to do with the Plaintiffs in this case. Similarly, Amazon also objects to this Request because it appears to seek information related to certain of Amazon’s other customers, none of whom have any material interest in this case, and none of whom possess facts that are relevant to the Plaintiffs’ claims in this case. Amazon also objects to this Request on the ground and to the extent that it seeks highly proprietary and sensitive business and financial information and trade secrets, and/or information protected by the attorney/client privilege and/or the work product doctrine, but because the Request is so wildly overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected (or responsive) documents, and will provide a privilege log when and if necessary and after its objections are ruled upon. With respect to Plaintiffs’ request for Amazon’s “financial records,” Amazon directs Plaintiffs to the website of the United States Securities and Exchange Commission (www.sec.gov), which provides free downloading of detailed financial statements for all publicly traded companies (including Amazon), and which information is equally available to Plaintiffs and to Amazon. Plaintiffs may also view Amazon’s financial and annual reports at www.amazon.com.

Request for Production Number 6: Any and all other documents identified in Amazon's "Initial Disclosures" that to date have not been produced.

Response to Request for Production Number 6: Amazon objects to this Request on the ground and to the extent that it seeks information protected by the attorney/client privilege and/or the work product doctrine, but because the Request is overbroad and the claims in the Amended Complaint lack sufficient detail, Amazon has no way of reasonably searching for or compiling privileged or protected documents, and will provide a privilege log when and if necessary and after its objections are ruled upon. Notwithstanding these objections, Amazon will produce certain documents related to Plaintiffs' Amazon Marketplace account and correspondence regarding that account. As stated in Amazon's Initial Disclosures, however, it is unclear from the allegations in the Amended Complaint what other documents or categories of documents might be relevant to the claims or defenses in this case. Notwithstanding these objections, Amazon will make certain documents related to Plaintiffs' Amazon Marketplace account and correspondence regarding that account available for inspection and copying at a mutually convenient time and place.

Request for Production Number 7: Any and all other documents, electronically stored information, and tangible things that are relevant to the claims raised in the Plaintiffs' Amended Complaint, to Amazon's defenses, etc.

Response to Request for Production Number 8: Amazon objects to this Request on the ground and to the extent that it is vague, ambiguous, and overbroad with respect to the term "etc." and because the Request improperly places the burden on Amazon to determine what documents might conceivably be relevant to Plaintiff's claims. Amazon also objects to this Request on the

ground and to the extent that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that the claims in the Amended Complaint (and this Request) lack sufficient detail for Amazon to determine what other documents or categories of documents might be relevant to the claims or defenses in this case. Amazon also objects to this Request on the ground and to the extent that it seeks information protected by the attorney/client privilege and/or the work product doctrine, but because the Request is so wildly overbroad, Amazon has no way of reasonably searching for or compiling privileged or protected documents, and will provide a privilege log when and if necessary and after its objections are ruled upon. Notwithstanding these objections, Amazon will make certain documents related to Plaintiffs' Amazon Marketplace account and correspondence regarding that account available for inspection and copying at a mutually convenient time and place.

Dated: December 4, 2010

CARLTON FIELDS, P.A.

CityPlace Tower – Suite 1200
525 Okeechobee Boulevard
West Palm Beach, Florida 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368

By: /s/ David B. Esau

James B. Baldinger
Florida Bar Number 869899
jbaldinger@carltonfields.com
David B. Esau
Florida Bar Number 650331
desau@carltonfields.com

Counsel for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2010, I served the foregoing document via E-Mail on the individuals identified on the Service List below.

/s/ David B. Esau
David B. Esau

SERVICE LIST

Albert Segal
Marianna Chaparova
10490 S.W. 12th Terr., Apt# 202
Miami, FL 33174
(via Email)

Exhibit 4

From: alex siegal [mailto:alby1969_98@yahoo.com]
Sent: Wednesday, December 08, 2010 12:19 PM
To: Esau, David B.
Cc: manach101@yahoo.com
Subject: Fw: Segal/Chaparova v. Amazon.com (Case No. 10-cv-20718, U.S. District Court for the Southern District of Florida)

The documents should have been sent to us electronically to begin with, as we requested, and we should have received those documents by December 4th. Can you please email to us all of the documents to which you refer - that are related to our seller account - by this Friday? Also, it is our position that our "other requests" were within the scope of the Federal Rules of Civil Procedure. Nonetheless, we are willing to simplify our request to include production of the following documents:

"Documents" means all materials within the full scope of FRCP 34, including but not limited to: all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including but without limitation to, email and attachments, correspondence, memoranda, notes, diaries, minutes, statistics, letters, telegrams, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, meetings or printouts, teletypes, facsimiles, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind.

(1) Request for production of documents that relate to our claim that Amazon is systematically withholding its seller-customers' funds for reasons unrelated to their performance as sellers on Amazon.com (see, e.g., Am. Compl., ¶¶ 33-35, 47-50); documents that relate to our claim regarding Amazon's fraudulent intent (see, e.g., Am. Compl. ¶¶ 56-84):

- (a) any documents that relate to those customers whose funds were withheld from them (not disbursed to them) in excess of thirty (30) days during 2008-2010;
- (b) any and all documents that relate to those seller-customers whose accounts were suspended or terminated (those customers who were prohibited from selling on Amazon.com) during 2008-2010;
- (c) any and all documents that relate to Amazon's seller-customers' disputes (disagreement expressed by Amazon's seller-customers over Amazon's decision not to disburse the funds in their "Amazon Seller Account") in re to Amazon's decision to withhold their funds for at least thirty (30) days during 2008-2010; and
- (d) any and all documents Amazon intends to use to defend itself against the above specified claims.

Amazon may redact the customers' personal and financial information.

If any privilege is claimed, you shall indicate whether any documents exist, or whether any communications took place; and also provide the following information for each such document in a "privileged documents log" or similar format:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the author(s) of the document;
- (e) the addressee(s) and any other recipient(s) of the document; and
- (f) the custodian of the document, where applicable.

(2) Request for production of documents that relate to our claim that Amazon has pocketed and continues to pocket ill-gotten profits as a direct result of its systematic practice of withholding the sellers' funds for extended periods of time (see, e.g., Am. Compl. ¶¶ 68-84, 91-98):

- (a) Amazon's financial records for 2008-2010, including bank statements for accounts it owns or uses to handle the funds it withholds from its seller-customers (funds that it does not disburse to its seller customers) for a period of thirty (30) days or longer (these documents cannot be obtained from Amazon's SEC filings);
- (b) Amazon's financial records, including bank statements for accounts it used to handle our funds during the months of November 2009 - May 2010; and
- (c) any and all documents Amazon intends to use to defend itself against the above specified claims and all other claims in our Am. Compl..

We have narrowed our request for production of documents that are relevant to the claims and defenses in this case and trust that we can resolve this matter without wasting the Court's time and resources. Hope to hear back from you soon! Thank you.

Exhibit 5

From: alex siegal [mailto:alby1969_98@yahoo.com]
Sent: Tuesday, December 07, 2010 4:36 PM
To: Esau, David B.
Cc: manach101@yahoo.com
Subject: Fw: Segal/Chaparova v. Amazon.com (Case No. 10-cv-20718, U.S. District Court for the Southern District of Florida)

As we stated to you previously, we genuinely want to make every effort to resolve our differences with you amicably and hope you are willing to do the same. Is there anything we can do to persuade Amazon to comply with our request for production of documents by the deadline set in Judge Cooke's Scheduling Order? We are more than willing to work with you on the specifics of our request. Thanks!

From: alex siegal

To: Esau, David B.

Cc: manach101@yahoo.com

Sent: Wed Dec 08 21:17:21 2010

Subject: Re: Segal/Chaparova v. Amazon.com (Case No. 10-cv-20718, U.S. District Court for the Southern District of Florida)

We have proposed a very narrow and unambiguous request for production of only the most relevant documents. See email below. Please let us know whether Amazon intends to cooperate with our discovery requests and will assist us in our effort to avoid wasting the Court's limited time and resources. Thank you in advance for your anticipated cooperation!

Fri, December 10, 2010 4:24:55 PM

Re: Segal/Chaparova v. Amazon.com (Case No. 10-cv-20718, U S. District Court for the Southern District of Florida)

From: alex siegal <alby1969_98@yahoo.com>

[Add to Contacts](#)

To: "Esau, David B." <desau@carltonfields.com>

You have **not** produced anything other than duplicates of the documents that we've produced, and a few others from various online discussion boards. By the way, why would you consider such correspondence relevant since, according to you, this case concerns merely our "personal" experience with Amazon and has "absolutely nothing to do with" Amazon's systematic conduct that has affected and continues to affect thousands of other honest folks?