

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PASHA ANWAR, et al.,)
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Plaintiffs,)
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v.)
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FAIRFIELD GREENWICH LIMITED, et al.,)
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Defendants.)
)
This Document Relates to:)
<i>Da Silva Ferreira v. EFG Capital International</i>)
<i>Corp., et al., 11-CV-813(VM)</i>)
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Master File No. 09-CV-118 (VM)

**PLAINTIFFS’ RENEWAL OF MOTION FOR ISSUANCE OF SUBPOENA
TO LAWRENCE D. (LONNIE) HOWELL**

Pursuant to Magistrate Judge Katz’s July 15, 2011 Memo Endorsed Order [D.E. 684], Plaintiffs, Lorrene Da Silva Ferreira and Arlete Da Silva Ferreira, individually and on behalf of all others similarly situated, renew their Motion for Issuance of Subpoena to Lawrence D. (Lonnie) Howell, and state:

On May 2, 2011, Plaintiffs filed a motion pursuant to the Walsh Act, 28 U.S.C. §1783, asking the Court to issue a subpoena for the deposition of Lawrence D. Howell (“Howell”), who is the chief executive officer of the parent company of Defendant, EFG Capital International, Inc. (“EFG Capital”). (A copy of the Motion is attached as **Ex. 1**). The Walsh Act allows federal courts to order the issuance of a subpoena to an American citizen living abroad (such as Howell) where (i) his testimony is “necessary in the interest of justice,” and (ii) “it is not possible to obtain his testimony in admissible form without his personal appearance.” 28 U.S.C. § 1783(a).

In its response filed May 23, 2011, EFG Capital did not dispute the detailed factual recitation set forth in Plaintiffs' Motion showing that Howell has relevant knowledge about the merits- and class-related issues in this case. (A copy of the Response is attached as **Ex. 2**). EFG Capital even agreed to produce Mr. Howell for deposition "at a reasonable time and place that is convenient for all parties" Plaintiffs highlighted these facts in their reply filed June 3, 2011. (A copy of the Reply is attached as **Ex. 3**).

On July 15, 2011, the Magistrate Judge issued his Order denying Plaintiffs' motion without prejudice. (The handwritten Order is found at page 6 of Ex. 3). The Magistrate Judge found that "[i]n light of the fact that there remains ample time to complete discovery, a motion to dismiss is pending, and a class has not yet been certified, and given Defendants' representation that Mr. Howell will be made available at a later time, Plaintiffs' motion for issuance of a subpoena is denied without prejudice to renew. Should the status of the case remain unchanged by October 3, 2011, Plaintiffs may revisit the issue." (emphasis added).

The status of the case remains unchanged. [D.E. 727]. Given the fact (i) that the March 12, 2012, discovery deadline is less than six months away; (ii) that Mr. Howell must come from Switzerland for the deposition; and (iii) that Howell's testimony may require Plaintiffs to conduct significant follow-up discovery, Plaintiffs renew the attached Motion for, and Reply in Support of, the Issuance of Subpoena to Lawrence D. Howell, and ask this Court to issue a subpoena directing Mr. Howell to appear in the United States for a deposition on or before December 9, 2011.

