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July 16, 2010

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VIA FACSIMILE (212-805-7901)

The Honorable Harold Baer, Jr.
U.S.D.C., S.D.N.Y.
500 Pearl Street
Chambers 2230
New York, NY 10007

Re: WNB 6.0-001
Gucci America, Inc. v. Frontline Processing Corp. et al.
Civil Action No. 09-6925-HB

Dear Judge Baer:

On behalf of my client, defendant Woodforest National Bank ("Woodforest"), I am writing to request that Your Honor reconsider your decision, communicated to us yesterday by Mr. Heeren, to permit plaintiff Gucci America Inc. ("Gucci") to file a motion for summary judgment, with all briefing on that motion to be completed by August 1, 2010, according to a schedule to be worked out between the parties. In the alternative, we request that Your Honor approve a briefing schedule on Gucci's proposed motion — which has not as yet been filed and as to which we have no commitment from Gucci when it will be filed — that would permit Woodforest a full and fair opportunity to respond. In this regard, Gucci has proposed to us that it will file its motion by Thursday, July 22, 2010, and that we file our opposition by July 31, 2010, thus giving Gucci an opportunity to submit a reply by Monday, August 2, 2010. (The August 1, 2010 deadline set by Your Honor is on a Sunday.)

For the reasons set forth below, we respectfully submit that the briefing schedule proposed by Gucci is unreasonable and will cause an unfair and prejudicial hardship to Woodforest and its counsel. Indeed, Gucci's proposal is particularly unreasonable, given that Gucci has offered no legitimate excuse for effectively ignoring the deadline for filing summary judgment motions set forth in the Amended Pretrial Scheduling Order filed June 7, 2010 (Dkt.41), and Woodforest has faithfully complied with that order, including reaching an agreement with Gucci regarding the joint motion by Woodforest and defendant Durango Merchant Services LLC ("Durango") to complete briefing on that already pending motion by July 23, 2010, as directed by the Court.¹

As set forth in my letter to Your Honor dated July 15, 2010, although the Amended Pretrial Scheduling Order filed June 7, 2010 (Dkt.41) set a deadline of July 2, 2010, for the filing

¹ In view of the Court's Opinion and Order filed June 23, 2010 (Dkt.42), the liability issues with respect to Woodforest and Durango present separate and distinct issues. Accordingly, while we continue to speak on behalf of Woodforest and Durango regarding their joint motion for summary judgment on the issue of statutory damages, the relief we are requesting here as to Gucci's proposed motion for summary judgment is requested on behalf of Woodforest only.



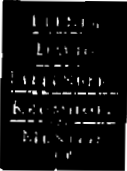
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of summary judgment motions, the first Woodforest learned of Gucci's intention to file such a motion was in an e-mail from Gucci's counsel received after 7:00 p.m. on Tuesday, July 13, 2010. As we previously noted, no mention was made of Gucci's intention to file such a motion when the parties appeared before Your Honor on June 30, 2010, at which time the undersigned counsel for Woodforest requested, and was granted by Your Honor, additional time to file a motion for summary judgment on behalf of Woodforest and Durango on the same date that their respective answers to the complaint were due. In Gucci's counsel's July 14, 2010 letter to Your Honor, in which Gucci's request for an extension to file its own motion for summary judgment was made, Gucci asserted that its request was necessitated by Durango's delay in complying with the Court's order dated July 2, 2010, in response to Gucci's motion against Durango for sanctions. Significantly, that order, and Gucci's motion, *had nothing whatsoever to do with any conduct by Woodforest* and provides no basis or excuse as to why Gucci could not have proceeded sooner with its filing of a motion for summary judgment *against Woodforest*, or to have at least previously requested an extension of time from the Court to do so.

As things presently stand, with regard to Woodforest's and Durango's motion for summary judgment (filed on July 7, 2010, with the permission of the Court), in order to complete briefing on that motion by July 23, 2010, as provided in the Amended Pretrial Scheduling Order and directed by Your Honor in response to our letter dated July 14, 2010, requesting an adjustment of the briefing schedule on that motion, we reached an agreement with Gucci that gave Gucci 12 ½ days rather than 14 days to oppose our motion, as had been provided in the Amended Pretrial Scheduling Order; and we agreed to cut our time to submit our reply in half, *i.e.*, from 7 days down to 3 ½ days.² Although Your Honor has now indicated that it is acceptable to the Court for briefing on that motion, as well as Gucci's proposed motion for summary judgment, to be completed by August 1, 2010, we are willing and intend to stand by the briefing schedule on our motion as is.

Turning now to Gucci's proposed motion, if Gucci is permitted to file it — and we still have no commitment from Gucci as to when that will be — and if all of the briefing on that motion is to be completed by the August 1, 2010 deadline set by Your Honor, as noted above, it will cause an unfair and prejudicial hardship to Woodforest and its counsel, since the undersigned is scheduled to be out of the office on vacation beginning on Friday, July 23, 2010, returning to the office on Tuesday, August 3, 2010. While we fully understand and appreciate that any delay in briefing any motions for summary judgment may impact on Your Honor's goal to resolve such motions within the 60-day period prior to trial, the delay and that impact are

² As a practical matter, the schedule we agreed to with Gucci effectively gives the undersigned, lead counsel for Woodforest, only one day to work on the reply due to other commitments, including the undersigned's participation in a seminar on Wednesday, July 21, 2010, sponsored by the New Jersey Institute for Continuing Legal Education, along with The Honorable Joseph A. Greenaway, Jr. of the Third Circuit Court of Appeals, The Honorable Stanley R. Chesler, US District Judge for the District of New Jersey, and The Honorable Toni A. Bongiovanni, US Magistrate Judge for the District of New Jersey.



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entirely of *Gucci's* doing, and are in no way the fault of Woodforest. But as the foregoing demonstrates, it is Woodforest and Woodforest only that will be prejudiced if Gucci is permitted to file its proposed motion as the Court has given it permission to do. This is particularly so given the fact that, in contrast to Woodforest's and Durango's motion, which is directed to a single, well-defined legal issue of statutory construction, we understand that Gucci's motion will be directed to *all* liability issues presented for adjudication. Undoubtedly, responding to such a motion will require a substantial amount of work, and while Gucci has had literally weeks if not months to plan and prepare its motion for filing — while keeping its intention to do so a secret from the Court and the defendants until almost two weeks after the deadline for filing had passed — Woodforest will be placed in the position of having to oppose that motion in little more than one week (approximately one-half of the time originally provided for in the Amended Pretrial Scheduling Order and one-third of the time presumptively allowed under Fed. R. Civ. P. 56(c)(1)(B)), at a time when Woodforest's lead counsel is scheduled to be out of town.

Based on all of the foregoing, and as set forth at the outset, we respectfully request that Your Honor reconsider your decision to permit Gucci to file a motion for summary judgment against Woodforest and withdraw that permission. Alternatively, if the Court remains inclined to permit Gucci to file its motion, then we respectfully request that the Court order Gucci to file by no later than noon on July 20, 2010 (along with Gucci's opposition to Woodforest's and Durango's summary judgment motion), that Woodforest be permitted to file its opposition by no later than Monday, August 9, 2010, and that Gucci not be permitted a reply. Under that schedule, Woodforest will have at least some reasonable opportunity to oppose Gucci's motion, which Gucci should have been required to file several weeks earlier.

While we understand and regret that Your Honor is being forced to deal with this matter while on vacation, we again point out that the present situation is not of Woodforest's making; and we thus look forward to your early and hopefully favorable disposition of our present request for relief.

Respectfully submitted

LERNER, DAVID, LITTENBERG,
KRLMHOLZ & MENTLIK, LLP
Attorneys for Defendant Woodforest National Bank

By: William L. Mentlik

WLM/dmf

cc: All counsel of Record (via e-mail)

7/16
The temetabile remains the same you will have to be able to present any new and hopefully attaching thoughts of a PA should you choose to do so & you set it up w/ my clerk & then over the Federal Rules which provides that comes he tried on their merit
SO ORDERED
Harold Baer Jr
USDC

Just for your information, I'm out of town NOW!

Endorsement:

The timetable remains the same. You will however be able to present any new and hopefully cataclysmic thoughts at oral argument should you choose to do so and you set it up with my clerk and then everyone will have been in accord with the tenor of the Federal Rules which provides that cases be tried on their merits, Just for your information, I'm "out of town" NOW!