

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOARING HELMET CORPORATION, a
Washington corporation,

Plaintiff,

v.

NANAL, INC., d/b/a LEATHERUP.COM, a
Nevada corporation,

Defendant.

No. C09-789-JLR

REPLY DECLARATION OF STACIA N.
LAY IN SUPPORT OF DEFENDANT
NANAL, INC.'S MOTION FOR
SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
November 26, 2010

I, Stacia N. Lay, on oath declare and state as follows:

1. I am an associate attorney with the law firm Hendricks & Lewis, PLLC. I represent Defendant Nanal, Inc. ("Nanal") in this action. I am over the age of 18 and, if called upon to testify, could testify competently to the matters stated herein.

2. By email dated October 15, 2010, Nanal produced to Plaintiff Soaring Helmet Corporation ("Plaintiff") the document Bates numbered D 000035 attached as Exhibit A to the Reply Declaration of Albert Bootesaz in Support of Defendant Nanal, Inc.'s Motion for Summary Judgment filed concurrently with this declaration. Attached hereto as **Exhibit A** is a true and correct copy of the email and accompanying letter, but not the attached document production, dated October 15, 2010 to Plaintiff's counsel. The document attached as Exhibit A to Mr. Bootesaz's declaration has been redacted as described by Mr. Bootesaz but an unredacted copy of the document was produced to Plaintiff.

REPLY DECLARATION OF STACIA N. LAY (C09-789-JLR) - 1
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HENDRICKS & LEWIS PLLC
901 Fifth Avenue, Suite 4100
Seattle, Washington 98164
TEL: (206) 624-1933

1 3. By email dated October 1, 2010, Nanal produced to Plaintiff the document Bates
2 numbered D 000033 – D 000034 attached as Exhibit B to the Reply Declaration of Mr. Bootesaz.
3 Attached hereto as **Exhibit B** is a true and correct copy of the email and accompanying letter, but
4 not the attached document production, dated October 1, 2010 to Plaintiff’s counsel. The
5 document attached as Exhibit B to Mr. Bootesaz’s declaration has been redacted as described by
6 Mr. Bootesaz but an unredacted copy of the document was produced to Plaintiff.

7 4. Attached hereto as **Exhibit C** are true and correct excerpts from documents
8 produced by Plaintiff during discovery, Bates numbered SHC – 00020, SHC – 00093, SHC –
9 00094, and SHC – 00099. Because of the large number of these documents (more than 80
10 pages), only the first pages of what appear to be two separate portions of the documents and the
11 pages containing totals for each portion have been provided to illustrate the nature of the
12 documents that were produced during discovery.

13 5. In the summary judgment declaration of Plaintiff’s counsel, Heather M. Morado,
14 Ms. Morado alleges that Nanal “expressed an interest” in deposing Plaintiff’s representatives but
15 claims that Nanal’s counsel “never followed up with notices of depositions, phone calls, or
16 requests for firm dates.” (Declaration of Heather M. Morado in Support of Plaintiff’s Response
17 to Defendant’s Motion for Summary Judgment, Docket No. 66, ¶ 15.) I do not think that
18 accurately reflects Nanal’s attempt to schedule depositions of Plaintiff’s witnesses. Consistent
19 with my general practice and as a courtesy to counsel and its client, rather than simply serving
20 notices of deposition setting dates for deposition without first checking availability with counsel,
21 on August 27, 2010, I emailed Ms. Morado, identifying the individuals Nanal wanted to depose,
22 asking for dates those witnesses would be available for deposition and locations of those
23 witnesses, and asking Plaintiff to stipulate to conducting the out-of-state depositions by
24 telephone. Although Nanal ultimately elected not to pursue the depositions, at the time of my
25 email, I did not intend my request to Ms. Morado to be a mere expression of interest in deposing
26 Plaintiff’s representatives but rather an actual request for “firm dates.” Ms. Morado never
27
28

1 responded to my email. Attached hereto as **Exhibit D** is a true and correct copy of my email to
2 Ms. Morado, dated August 27, 2010.

3 I declare under penalty of perjury under the laws of the State of Washington that the
4 foregoing is true and correct.

5 EXECUTED at Seattle, Washington, this 26th day of November, 2010.

6 s/ Stacia N. Lay
7 STACIA N. LAY

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1 **PROOF OF SERVICE**

2 I am employed in the County of King, State of Washington. I am over the age of
3 eighteen years and am not a party to the within action. My business address is Hendricks &
4 Lewis PLLC, 901 Fifth Avenue, Suite 4100, Seattle, Washington 98164.

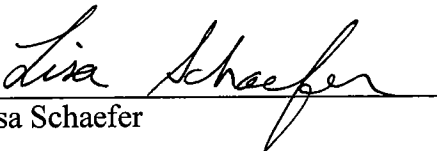
5 I hereby certify that on November 26, 2010, I electronically filed the foregoing with the
6 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
7 following CM/ECF participants:

8 Heather M. Morado, Esq.
9 Stacie Foster, Esq.
10 Steve Edmiston, Esq.
11 Invicta Law Group, PLLC
12 1000 Second Avenue, Suite 3310
13 Seattle, Washington 98104
14 Telephone: (206) 903-6364
hmorado@invictalaw.com
sfoster@invictalaw.com
sedmiston@invictalaw.com

15 Attorneys for Plaintiff Soaring
16 Helmet Corporation

17 I declare under penalty of perjury under the laws of the State of Washington that the
18 foregoing is true and correct.

19 Executed November 26, 2010, at Seattle, Washington.

20 
21 Lisa Schaefer