

The Honorable James L. Robart

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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

DECLARATION OF STACIA N. LAY IN
SUPPORT OF DEFENDANT NANAL,
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE A
THIRD AMENDED COMPLAINT

NOTE ON MOTION CALENDAR:
December 31, 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. Attached hereto as **Exhibit 1** is a true and correct copy of the Court's Minute Order Setting Trial Date and Related Dates, Docket No. 42, entered in this action on February 2, 2010.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Albert Bootesaz in Support of Motion of Defendant Nanal, Inc. to Set Aside Default, Docket No. 29, which was e-filed in this action on October 7, 2009.

1 4. Attached hereto as **Exhibit 3** is a true and correct copy of the parties' Amended
2 Joint Status Report and Discovery Plan, Docket No. 41, which was e-filed in this action on
3 January 19, 2010.

4 5. Attached hereto as **Exhibit 4** is a true and correct copy of Defendant's Initial
5 Disclosures Pursuant to FED. R. CIV. P. 26(a)(1), which was served on Plaintiff's counsel on or
6 about January 25, 2010.

7 6. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiff's Amended
8 Initial Disclosures Pursuant to FED. R. CIV. PRO. 26(a)(1), which we received on or about
9 February 3, 2010. Based on the page numbering, the copy received appears to be missing a
10 couple of pages.

11 7. By messenger service on July 30, 2010, Nanal produced to Plaintiff Soaring
12 Helmet Corporation ("Plaintiff"), among other discovery materials, Nanal's responses to
13 Plaintiff's First Set of Interrogatories and documents Bates numbered D 000001 – D 000012.
14 Attached hereto as **Exhibit 6** is a true and correct copy of the letter, dated July 30, 2010, to
15 Plaintiff's counsel, and Nanal's interrogatory responses and documents Bates numbered D
16 000006 – D 000009, which were attached to the letter.

17 8. Following a meet and confer process Nanal initiated, Nanal served supplemental
18 interrogatory responses on Plaintiff on August 20, 2010, corrected interrogatory responses to
19 correct an inadvertent date error on September 16, 2010, and confidential supplemental
20 interrogatory responses containing financial information on September 16, 2010. No changes
21 were made in any of these responses to the identification of Albert Bootesaz, president of Nanal,
22 as the person responding to the discovery requests and primarily responsible for selecting the
23 Google AdWords keywords.

24 9. Attached hereto as **Exhibit 7** are true and correct copies of documents produced
25 by Plaintiff in this action, Bates numbered SHC – 189 to SHC – 191. Nanal first received copies
26 of these documents by email on September 20, 2010, 5:26 p.m. Nanal received hard copies of
27 these documents by mail on September 22, 2010. Plaintiff also produced a lengthy investigative

1 report relating in large part to Mr. Bootesaz. The report was not dated but was produced at the
2 same time as and immediately follows the documents attached as Exhibit 7.

3 10. After receiving Plaintiff's Motion for Leave to File Third Amended Complaint,
4 Docket No. 74, I compared Plaintiff's Second Amended Complaint (Docket No. 48), with the
5 proposed Third Amended Complaint appended as Attachment 1 to Plaintiff's Motion (Docket
6 No. 74-2). I discovered that in addition to new allegations pertaining to Plaintiff's request to add
7 Albert Bootesaz as a defendant, Plaintiff had made additional substantive changes to its
8 complaint that were not related to the proposed addition of Mr. Bootesaz as a defendant.

9 11. Specifically, in paragraph 4.4 of Plaintiff's proposed Third Amended Complaint,
10 Plaintiff deleted allegations made in its Second Amended Complaint regarding the Yahoo and
11 Bing search engines. Similarly, Plaintiff deleted the former paragraph 4.10 of its Second
12 Amended Complaint, which also contained allegations regarding internet search engines other
13 than Google's, and the former Exhibit D referenced in that paragraph that purported to be search
14 results for the words "vega helmets" on the Bing search engine. In addition, Exhibit C to the
15 proposed Third Amended Complaint contains additional pages that were not included in the
16 same exhibit attached to the Second Amended Complaint.

17 12. Attached hereto as **Exhibit 8** is a true and correct copy of a chart I prepared based
18 on my comparison of the two amended complaints, noting the substantive changes between
19 Plaintiff's Second Amended Complaint and proposed Third Amended Complaint. Non-
20 substantive alterations, such as changes from "Defendant" to "Defendants" and related grammar
21 changes, have not been noted on the chart.

22 13. For the Court's convenience, attached hereto as **Exhibits 9 and 10** are true and
23 correct copies of, respectively, Plaintiff's Second Amended Complaint, Docket No. 48, and
24 Plaintiff's proposed Third Amended Complaint, Docket No. 74-2, which were used to conduct
25 the comparison described in paragraphs 10 through 12 above.

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

EXECUTED at Seattle, Washington, this 22nd day of December, 2010.

s/Stacia N. Lay
STACIA N. LAY

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PROOF OF SERVICE

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

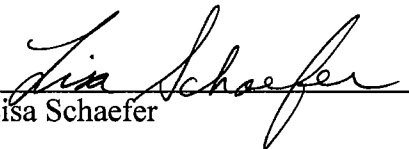
I hereby certify that on December 22, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Heather M. Morado, Esq.
Stacie Foster, Esq.
Steve Edmiston, Esq.
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sedmiston@invictalaw.com

Attorneys for Plaintiff Soaring
Helmet Corporation

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

Executed December 22, 2010, at Seattle, Washington.



Lisa Schaefer