

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

DECLARATION OF STACIA N. LAY IN
SUPPORT OF DEFENDANT NANAL,
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION IN LIMINE

NOTE ON MOTION CALENDAR:
January 14, 2011

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 my letter dated July 30, 2010, to counsel for Plaintiff Soaring Helmet Corporation ("Plaintiff"), Heather M. Morado, and Defendant Nanal, Inc.'s Objections and Responses to Plaintiff's First Set of Interrogatories Nos. 1-18, which accompanied the letter.

3. On August 11, 2010, I emailed a letter to Plaintiff's counsel, Ms. Morado, identifying a number of deficiencies in Plaintiff's responses to Nanal's discovery requests and requesting a conference of counsel to discuss the issues. Because the deadline for filing discovery motions was August 20, I requested that the conference take place no later than August

DECLARATION OF STACIA N. LAY (C09-789-JLR) - 1
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1 19 in the event we were unable to resolve the deficiencies in Plaintiff's responses. On August
2 12, we agreed to hold the conference at 10 a.m. on August 18, 2010.

3 4. Shortly before 4 p.m. on August 16, 2010, I received an emailed letter from
4 Plaintiff's counsel, Ms. Morado, including a list of alleged issues with Nanal's discovery
5 responses and requesting that those issues be discussed in the conference scheduled for the
6 morning of August 18. Attached hereto as **Exhibit 2** is a true and correct copy of the email and
7 letter from Ms. Morado dated August 16, 2010.

8 5. Ms. Morado and I spoke as scheduled the morning of August 18, 2010, and both
9 of us agreed to provide additional responses and/or documents. Ms. Morado followed up the
10 conference with an email detailing the agreements made on behalf of Nanal and I responded to
11 Ms. Morado's email, correcting a couple of errors in her email and confirming the agreements
12 made on behalf of Plaintiff. Attached hereto as **Exhibit 3** is a true and correct copy of Ms.
13 Morado's email to me dated August 18, 2010. Also attached hereto as **Exhibit 4** is a true and
14 correct copy of my email to Ms. Morado dated August 18, 2010.

15 6. Two days after the discovery conference, on August 20, 2010, I emailed Nanal's
16 supplemental interrogatory responses to Plaintiff's counsel, Ms. Morado, and requested further
17 information regarding Plaintiff's Request for Production No. 3. Nanal's response to
18 Interrogatory No. 3 specifically was supplemented to address Plaintiff's allegation regarding the
19 Xelement motorcycle jacket, stating in relevant part: "In further response, based on Nanal's
20 investigation to-date, Nanal did not use the word 'vega' in connection with a motorcycle jacket
21 as alleged in Plaintiff's Second Amended Complaint and Exhibit E thereto." Attached hereto as
22 **Exhibit 5** is a true and correct copy of my email dated August 20, 2010, to Ms. Morado and
23 Defendant Nanal, Inc.'s Supplemental Responses to Plaintiff Soaring Helmet Corporation's
24 Interrogatories Nos. 3, 8, 9, 10 and 11, which accompanied the email.

25 7. Also on August 20, 2010, the deadline for filing discovery motions, I received an
26 emailed letter from Plaintiff's counsel, Ms. Morado, stating that Plaintiff would not file a motion
27 to compel but purporting to "reserve[] the right to ask the Court for relief" if Nanal did not
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1 provide "sufficient" responses to certain of Plaintiff's discovery requests. Attached hereto as
2 **Exhibit 6** is a true and correct copy of Ms. Morado's letter to me dated August 20, 2010, without
3 the attached Requests for Admission.

4 8. On September 2, 2010, I served supplemental document production on Plaintiff's
5 counsel, Ms. Morado, Bates numbered D 000013 – D 000027, which included documents
6 detailing Nanal's Google advertising expenses and printing costs for advertising material.
7 Attached hereto as **Exhibit 7** is a true and correct copy of my letter to Ms. Morado dated
8 September 2, 2010, without the attached documents and privilege log.

9 9. On September 15, 2010, I received a letter from Plaintiff's counsel, Ms. Morado,
10 making various allegations about Nanal's purportedly "deficient" discovery responses and
11 claiming that Nanal had not produced responsive information as agreed during our discovery
12 conference on August 18, 2010. Attached hereto as **Exhibit 8** is a true and correct copy of Ms.
13 Morado's letter to me dated September 15, 2010.

14 10. Because I believed Ms. Morado's September 15, 2010 letter contained a number
15 of inaccuracies, I responded to those inaccuracies by letter the next day. Attached hereto as
16 **Exhibit 9** is a true and correct copy of my letter to Ms. Morado dated September 16, 2010,
17 without the attachments.

18 11. Also accompanying my September 16, 2010 letter to Ms. Morado were Nanal's
19 corrected responses to certain of Plaintiff's interrogatories. Specifically, we had realized that
20 Nanal's responses to Interrogatory Nos. 2, 4, 8 and 10 included an inadvertent date error that
21 specified April 3, 2010 as the date Nanal discontinued use of the Google AdWords keywords
22 instead of the correct date of April 3, 2009. Therefore, to correct that error, Nanal served
23 corrected interrogatory responses. My September 16th letter to Ms. Morado specifically stated
24 that only Nanal's responses to Interrogatory Nos. 2, 4, 8 and 10 had been corrected and those
25 responses were specifically labeled as "Corrected" responses. Interrogatory responses that were
26 not corrected, such as the response to Interrogatory No. 3, were included in this set of
27 "corrected" responses purely for organizational purposes so that there would be a complete
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1 correct set of non-confidential interrogatory responses. Attached hereto as **Exhibit 10** is a true
2 and correct copy of Defendant Nanal, Inc.'s Corrected Responses to Plaintiff Soaring Helmet
3 Corporation's Interrogatories Nos. 1-4, 6-11, 13 and 15-18, which was served on Plaintiff on
4 September 16, 2010.

5 12. Also on September 16, 2010, Nanal served supplemental responses to Plaintiff's
6 Interrogatory Nos. 5, 12 and 14 to include sales and advertising costs information as requested
7 by Plaintiff.

8 13. On September 21, 2010, Plaintiff's counsel, Stacie Foster, sent a letter to Nanal's
9 counsel Shahrokh Mokhtarzadeh, who had represented Albert Bootesaz during his individual
10 deposition and the Rule 30(b)(6) deposition of Nanal, following up on certain requests for
11 information and/or documents that had been made during the depositions on September 20.
12 Attached hereto as **Exhibit 11** is a true and correct copy of Ms. Foster's letter to Mr.
13 Mokhtarzadeh dated September 21, 2010.

14 14. On September 27, 2010, I forwarded additional document production to Plaintiff's
15 counsel, Ms. Foster, Bates numbered D 000028 – D 000030, including sales information for
16 Nanal for 2007, 2008 and 2009, and specific information about the number of items sold and
17 sales in dollars for the Xelement brand (boots, saddle bag, jacket) for those years. Attached
18 hereto as **Exhibit 12** is a true and correct copy of my letter to Ms. Foster dated September 27,
19 2010, without the attachments.

20 15. In further follow-up to Ms. Foster's September 21st letter, on October 1, 2010, I
21 sent a letter to Ms. Foster addressing the specific items in her letter and enclosing additional
22 document production, Bates numbered D 000031 – D 000034, including sales and costs
23 information for the years 2007, 2008 and 2009 (which again included information for the
24 Xelement brand) and sales information relating to Nanal's Google AdWords advertisement.
25 Attached hereto as **Exhibit 13** is a true and correct copy of my letter to Ms. Foster dated October
26 1, 2010, without the attachments.

1 16. Finally, on October 15, 2010, I sent a letter to Plaintiff's counsel, Ms. Morado,
2 enclosing a three-year costs analysis by Nanal, Bates numbered D 000035, which specifically
3 identified the costs and ordinary income associated with the Xelement brand (boots, saddle bag,
4 jacket) for the years 2007, 2008 and 2009. Attached hereto as **Exhibit 14** is a true and correct
5 copy of my letter to Ms. Morado dated October 15, 2010. The attachment to the letter has been
6 redacted to delete information relating to the Hawk and Outlaw helmet brands as they have no
7 relevance to this action. An unredacted copy was produced to Plaintiff on October 15.

8 17. All of the documents produced by Nanal referenced in paragraphs 8, 15, and 16
9 above have been identified by Plaintiff as trial exhibits in the draft pretrial order provided by
10 Plaintiff. The only financial documents produced by Nanal that Plaintiff did not identify as trial
11 exhibits are described in paragraph 14, namely, D 000028 – D 000030.

12 18. On December 23, 2010, I sent a letter to counsel for Plaintiff, Ms. Morado,
13 detailing the issues that Nanal intended to raise in its motions in limine and attempting to provide
14 a summary explanation of the basis for each issue. I formally requested a conference of counsel
15 pursuant to CR 7(d)(4) to discuss the issues. Ms. Morado and I ultimately agreed to speak on
16 December 29 at 10 a.m. The afternoon of December 28, the day before our planned conference,
17 Ms. Morado sent an email identifying two motions in limine that Plaintiff might file.
18 Notwithstanding the short notice, I attempted to conduct some factual and legal research in order
19 to be able to discuss the subjects of Plaintiff's motions in limine as stated by Ms. Morado in her
20 email. Ms. Morado and I spoke on December 29th as planned and our discussion as to Plaintiff's
21 proposed motions in limine was consistent with the subjects identified in Ms. Morado's email
22 and specifically as to Plaintiff's assertion that Mr. Bootesaz's deposition testimony constitutes
23 judicial admissions. We did not specifically discuss the assertion as stated in Plaintiff's filed
24 motion in limine that Nanal should be precluded from introducing evidence as to gross and net
25 profits relating to the Xelement jacket for purportedly failing to produce that information in
26 discovery pursuant to FED. R. CIV. P. 37(c)(1).

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19. Attached hereto as Exhibit 15 is a true and correct copy of my December 23, 2010 letter to Ms. Morado, identifying the subjects of Nanal's proposed motions in limine and requesting a conference of counsel.

20. Attached hereto as Exhibit 16 is a true and correct copy of Ms. Morado's December 28, 2010 email identifying the subjects of Plaintiff's two proposed motions in limine.

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 10th day of January, 2011.

s/Stacia N. Lay

STACIA N. LAY

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 January 10, 2011, 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 Invicta Law Group, PLLC
11 1000 Second Avenue, Suite 3310
12 Seattle, Washington 98104
13 Telephone: (206) 903-6364
14 hmorado@invictalaw.com
15 sfoster@invictalaw.com

16 Attorneys for Plaintiff Soaring
17 Helmet Corporation

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

20 Executed January 10, 2011, at Seattle, Washington.

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Lisa Schaefer