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THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting
of herself and all other persons similarly
situated,

Plaintiffs, and, as to Ms.
Kim, counterclaim
defendant,

v.

COACH, INC., a Maryland corporation,
and COACH SERVICES, INC., a
Maryland corporation,

Defendants, and, as to
Coach, Inc., counterclaim
plaintiff.

No. 2:11-cv-00214-RSM

**DECLARATION OF PATRICK EAGAN
IN SUPPORT OF DEFENDANT COACH,
INC.'S OPPOSITION TO MOTION TO
COMPEL**

I, Patrick Eagan, declare as follows:

1. I am one of the attorneys for Coach, Inc. ("Coach") in this lawsuit. I am an attorney in the Seattle office of DLA Piper LLP. I have personal knowledge of the facts set forth in this declaration, and if called to do so, I can and would testify competently thereto.

2. On February 8, 2011, counsel for Gina Kim filed a complaint in the above-captioned lawsuit (the "Lawsuit"). (Dkt. No. 1.)

3. On February 11, 2011, my colleague, Stelman Keehnel, telephoned counsel for Ms. Kim, Jason Moore, and requested a meeting to discuss critical facts that, in our belief,

1 should compel counsel for Ms. Kim to withdraw the Lawsuit.

2 4. On February 12, 2011, my colleague, Stelman Keehnel, sent an email to
3 counsel for Ms. Kim. Mr. Keehnel explained his desire and indicated his availability to meet
4 with counsel for Ms. Kim to discuss the factual basis for the Lawsuit. A true and correct copy
5 of that email is attached as Exhibit A.

6 5. On February 14, Jay Carlson, one of the attorneys for Ms. Kim, responded to
7 Mr. Keehnel's email. In his response, less than one week after filing the Lawsuit, Mr. Carlson
8 refused to meet with Mr. Keehnel to discuss the factual basis for the Lawsuit unless Coach
9 provided a "written summary" of its contentions. Mr. Carlson also requested a Rule 26(f)
10 conference. A true and correct copy of that email is attached as Exhibit B.

11 6. On February 17, 2011, in response to Mr. Carlson's request for a written
12 summary, Mr. Keehnel sent a letter to counsel for Ms. Kim explaining why the Lawsuit was
13 improper and violated Rule 11. Mr. Keehnel reiterated his desire to meet with opposing
14 counsel to discuss the factual basis for the Lawsuit, and indicated his availability to do so. A
15 true and correct copy of that letter is attached as Exhibit C.

16 5. On February 17, 2011, Mr. Carlson responded by email to Mr. Keehnel's letter.
17 In his response, Mr. Carlson stated that he would not meet with Mr. Keehnel to discuss the
18 factual basis for the Lawsuit. Mr. Carlson further attempted to "confirm" a Rule 26(f)
19 conference for the next day, Friday, February 18, 2011, because Mr. Keehnel indicated in his
20 earlier letter that he was available at that time. A true and correct copy of Mr. Carlson's email
21 is attached as Exhibit D.

22 6. A Rule 26(f) conference on February 18, 2011 would have been utterly
23 impracticable. The lawsuit was ten days old. Coach had not had an opportunity to inquire into
24 its records or fully consider its defenses. Coach Services, Inc., a co-defendant, had not been
25 served – and still has not been served. No answer or counterclaims had been filed. Mr.
26 Keehnel, Mr. Riojas, and I had not had time to confer with our client regarding discovery or

1 prepare properly for a Rule 26(f) conference. A Rule 26(f) conference for a large client like
2 Coach cannot be scheduled on one day's notice. Holding a Rule 26(f) conference on February
3 18, 2011 would have been entirely impracticable.

4 7. On February 18, 2011, Mr. Carlson sent an email to Mr. Keehnel. Mr. Carlson
5 stated that he had hoped to hold a Rule 26(f) conference that day and stated that Mr. Keehnel
6 "had indicated in writing that [he was] available to confer." As is clear from the
7 correspondence, Mr. Keehnel had done no such thing. Mr. Carlson further stated that he was
8 unavailable from February 18, 2011 until February 28, 2011, and stated "[p]lease do not file or
9 note any motions during that time." A true and correct copy of Mr. Carlson's February 18,
10 2011 email is attached as Exhibit E.

11 8. On February 18, 2011, Mr. Keehnel responded by email to Mr. Carlson's email.
12 Mr. Keehnel corrected Mr. Carlson's misstatement regarding the scheduling of a Rule 26(f)
13 conference. A true and correct copy of Mr. Keehnel's February 18, 2011 email is attached as
14 Exhibit F.

15 9. On February 19, 2011, Mr. Carlson responded by email to Mr. Keehnel's email.
16 Mr. Carlson purported to schedule a Rule 26(f) conference for February 28, 2011 at 2pm. The
17 remainder of Mr. Carlson's email speaks for itself. A true and correct copy of Mr. Carlson's
18 February 19, 2011 email is attached as Exhibit G.

19 10. On February 21, 2011, Mr. Keehnel responded by email to Mr. Carlson's
20 February 19, 2011 email. Mr. Keehnel renewed his proposal that attorneys for both sides
21 discuss the factual basis for the Lawsuit. Mr. Keehnel also explained why Coach was not
22 prepared to participate in a Rule 26(f) conference. A true and correct copy of Mr. Keehnel's
23 February 21, 2011 email is attached as Exhibit H.

24 11. On February 28, 2011, Mr. Keehnel sent an email to counsel for Ms. Kim
25 requesting consent to a confidentiality agreement. Mr. Keehnel also explained, again, why
26 Coach was not yet prepared to hold a Rule 26(f) conference. Mr. Keehnel pointed to the fact

1 that Coach Services, Inc. had still not been served, that Coach's inquiry into the matter was not
2 complete, and that Coach could not possibly be prepared to serve initial disclosures within two
3 weeks. A true and correct copy of Mr. Keehnel's February 28, 2011 email is attached as
4 Exhibit I.

5 12. On February 28, 2011, Mr. Carlson responded by email to Mr. Keehnel's
6 February 28, 2011 email. Mr. Carlson indicated that he would prefer to have a Rule 26(f)
7 conference as quickly as possible. A true and correct copy of Mr. Carlson's February 28, 2011
8 email is attached as Exhibit J.

9 13. Also on February 28, 2011, Mr. Carlson responded by email to Mr. Keehnel's
10 February 21, 2011 email. Mr. Carlson indicated that he would not meet with Mr. Keehnel in
11 any forum other than the required Rule 26(f) conference. A true and correct copy of Mr.
12 Carlson's February 28, 2011 email is attached as Exhibit K.

13 14. Also on February 28, 2011, after the filing of the Lawsuit but before counsel for
14 Ms. Kim had filed their First Amended Complaint, and before Coach had filed its Answer and
15 Counterclaims, and before counsel for Ms. Kim had filed their request for leave to file a Second
16 Amended Complaint, and before Coach had filed its Amended Answer and Counterclaim, Mr.
17 Keehnel and I called Mr. Carlson to confer regarding a possibility of a protective order. In our
18 phone call, Mr. Carlson stated that he would not consider a broad confidentiality agreement
19 before the Rule 26(f) conference. Mr. Keehnel stated that Coach would strongly prefer to share
20 detailed information about its online anti-counterfeiting efforts. Mr. Keehnel stated that such
21 information would establish conclusively that counsel for Ms. Kim's statements in the
22 Complaint that Coach failed to conduct any investigation into Ms. Kim's eBay listing were
23 demonstrably false. Mr. Keehnel further stated that such information could not be shared
24 unless counsel for Ms. Kim would agree to keep confidential the information describing
25 Coach's online anti-counterfeiting efforts. Mr. Keehnel stated that, if counsel for Ms. Kim
26 would not consider either a broad confidentiality agreement or one limited to specific details

1 about Coach's online anti-counterfeiting efforts, Coach would be forced to move for a
2 protective order in order to prevent wide disclosure of highly confidential information.

3 15. In our February 28, 2011 telephone conference, Mr. Keehnel again explained
4 why a Rule 26(f) conference was impracticable. Among other reasons, Mr. Keehnel stated that
5 Coach was considering filing a counterclaim, the filing of which would necessitate a second
6 Rule 26(f) conference if one were held before the deadline to answer. Mr. Carlson asked if Mr.
7 Keehnel believed that counsel for Ms. Kim had fulfilled their obligation to meet and confer
8 prior to filing a motion to compel a Rule 26(f) conference. Mr. Keehnel stated that counsel for
9 Ms. Kim had not fulfilled their meet and confer obligation.

10 16. On March 2, 2011, Mr. Carlson sent an email to Mr. Keehnel inquiring as to
11 why service was necessary on Coach Services, Inc. A true and correct copy of Mr. Carlson's
12 March 2, 2011 email is attached as Exhibit L.

13 17. Also on March 2, 2011, counsel for Ms. Kim filed their First Amended
14 Complaint under Fed.R.Civ.P. 15(a). (Dkt. No. 4.) The First Amended Complaint added
15 counsel for Ms. Kim as plaintiffs, and added a claim for declaration of no defamation.

16 18. On March 3, 2011, Coach filed an Answer and Counterclaims. (Dkt. No. 6.)

17 19. On March 9, 2011, counsel for Ms. Kim filed an answer to Coach's
18 counterclaim. (Dkt. No. 8.)

19 20. On March 16, 2011, counsel for Ms. Kim filed a motion to compel a Rule 26(f)
20 conference. (Dkt. No. 15.) As of March 16, 2011, it had been more than two weeks since the
21 February 28, 2011 telephone conference between Mr. Carlson and counsel for Coach. During
22 that time, no counsel for Ms. Kim spoke personally with any counsel for Coach. In the interim,
23 a First Amended Complaint, an Answer and Counterclaim, and an Answer to Counterclaim had
24 all been filed. There is simply no way that the February 28, 2011 telephone conference
25 satisfies counsel for Ms. Kim's obligation to meet and confer as to their March 16, 2011
26 motion.

1 20. On March 18, 2011, I sent an email to counsel for Ms. Kim. In my email, I
2 indicated that Coach was prepared to hold a Rule 26(f) conference as to Ms. Kim’s claims
3 against Coach. I also indicated that the class definition in the First Amended Complaint
4 specifically excluded former employees of Coach. Because Ms. Kim is a former Coach
5 employee, she was not in the class and could not serve as class representative. A true and
6 correct copy of my March 18, 2011 email is attached as Exhibit M.

7 21. On March 18, 2011, Mr. Carlson responded by email to my March 18, 2011
8 email. Mr. Carlson stated that counsel for Ms. Kim would not agree to a limited Rule 26(f)
9 conference. Mr. Carlson also stated that the fact that Ms. Kim was not a member of the
10 putative class was “[e]asily fixable,” although he did not state how. We were uncertain as to
11 how or whether the class definition would be amended, especially considering that, as far as
12 counsel for Ms. Kim knew, former employees might be subject to arbitration clauses or
13 counterclaims arising out of their employment agreements that may defeat commonality. A
14 true and correct copy of Mr. Carlson’s March 18, 2011 email is attached as Exhibit N.

15 22. On March 22, 2011, counsel for Ms. Kim attempted to file an amended
16 complaint by “praecipe.” (Dkt. No. 18.) The Clerk struck the filing. (Dkt. No. 19.)

17 23. Also on March 22, 2011, I indicated by email to counsel for Ms. Kim that Coach
18 would consent to the filing of an amended complaint. A true and correct copy of my March 22,
19 2011 email is attached as Exhibit O.

20 24. On March 24, 2011, Coach filed an Amended Answer and Amended
21 Counterclaim. (Dkt. No. 21.)

22 25. Also on March 24, 2011, I sent an email to counsel for Ms. Kim indicating that
23 Coach was prepared to participate in a Rule 26(f) conference and offered to propose times
24 within the next week to complete the conference. A true and correct copy of my March 24,
25 2011 email is attached as Exhibit P.

26 26. On March 24, 2011, Mr. Carlson responded to my March 24, 2011 email. Mr.

1 Carlson indicated that counsel for Ms. Kim would look at their calendars and get back to us. A
2 true and correct copy of Mr. Carlson's March 24, 2011 email is attached as Exhibit Q.

3 27. On March 25, 2011, I sent an email to counsel for Ms. Kim indicating that I had
4 not heard back from them regarding Coach's request to schedule a Rule 26(f) conference. A
5 true and correct copy of my March 25, 2011 email is attached as Exhibit R.

6 28. On March 28, 2011, I sent another email to counsel for Ms. Kim indicating that I
7 had not heard back from them regarding Coach's repeated requests to schedule a Rule 26(f)
8 conference, beginning on March 24, 2011. A true and correct copy of my March 28, 2011
9 email is attached as Exhibit S.

10 29. On March 28, 2011, Christopher Carney, one of Ms. Kim's attorneys, responded
11 to my earlier email and stated that counsel for Ms. Kim would agree to hold a conference. A
12 true and correct copy of Mr. Carney's March 28, 2011 email is attached as Exhibit T.

13 30. On March 28, 2011, I responded by email to Mr. Carney's earlier email, and
14 requested that counsel for Ms. Kim withdraw their motion to compel. A true and correct copy
15 of my March 28, 2011 email is attached as Exhibit U.

16 31. On March 28, 2011, Mr. Carlson responded by email to my email requesting
17 that counsel for Coach withdraw their motion. A true and correct copy of Mr. Carlson's March
18 28, 2011 email is attached as Exhibit V.

19 32. On March 28, 2011, Mr. Carney sent an email to counsel for Coach stating that
20 counsel for Ms. Kim would agree to hold the Rule 26(f) conference on Thursday, March 31,
21 2011. Mr. Carney also stated that counsel for Ms. Kim would prefer to leave the motion to
22 compel a Rule 26(f) conference on the Court's calendar, despite the scheduling of a Rule 26(f)
23 conference. A true and correct copy of Mr. Carney's March 28, 2011 email is attached as
24 Exhibit W.

25 33. On March 28, 2011, I responded by email to Mr. Carney's email. I asked if
26 counsel for Ms. Kim would agree to continue their motion by a week, so as to obviate Coach's

1 response. A true and correct copy of my March 28, 2011 email is attached as Exhibit X.

2 34. On March 28, 2011, Mr. Carney responded by email to my email requesting a
3 continuance. In his email, Mr. Carney stated that, despite the fact that a Rule 26(f) conference
4 is currently scheduled for Thursday, March 31, 2011, and despite the fact that I have spent the
5 last five days attempting to schedule that conference, counsel for Ms. Kim would not agree to
6 continue the hearing on their motion to compel a Rule 26(f) conference unless Coach agreed to
7 pay \$750.00. A true and correct copy of Mr. Carney's March 28, 2011 email is attached as
8 Exhibit Y.

9 35. This case involves the brief removal of a listing from eBay, followed by
10 complete reinstatement of the listing. The bag featured in the listing had a list price of \$8.50.
11 Coach has already spent many, many times that amount just litigating this motion to compel.

12 36. This motion to compel was filed in violation of Ms. Kim's attorneys' obligation
13 to meet and confer.

14 37. Counsel for Ms. Kim have maintained this motion to compel in bad faith. I
15 indicated on March 24, 2011 that counsel for Coach was prepared to schedule a Rule 26(f)
16 conference. It was not until March 28, 2011 that counsel for Ms. Kim agreed to schedule the
17 conference. Further, this motion has already been mooted by the scheduling of a Rule 26(f)
18 conference. Refusing to withdraw the motion from the Court's calendar is a waste of the
19 Court's and Coach's resources. The fact that counsel for Ms. Kim would agree to continue the
20 hearing for \$750.00 demonstrates that there is no actual reason for refusing to continue the
21 hearing date on this motion to compel a Rule 26(f) conference, except to cause Coach to incur
22 the expense of drafting these opposition papers.

1 I declare under penalty of perjury under the laws of the United States of America that
2 the foregoing is true and correct.

3 Executed at Seattle, Washington, this 28th day of March, 2011.

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5 s/ Patrick Eagan
6 Patrick Eagan, WSBA No. 42679
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 28, 2011, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF System which will send notification of such filing to all
4 counsel of record.

5 Dated this 28th day of March, 2011.

6 *s/Stellman Keehnel*
7 _____
8 Stellman Keehnel, WSBA No. 9309

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