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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

**DEFENDANT COACH, INC.’S
PROPOSED DISCOVERY PLAN**

Pursuant to Federal Rule of Civil Procedure 26(f)(2), Defendant Coach, Inc. (“Coach”) hereby submits its proposed discovery plan. Despite Coach’s objection that conducting a Rule 26(f)(2) conference was premature,¹ the parties conferred on March 31, 2011 regarding a proposed discovery plan, but were unable to resolve significant differences regarding the scope and timing of discovery. On April 1, 2011, by e-mail, Coach attempted to obtain plaintiff’s

¹ The March 31, 2011 conference was premature for numerous reasons, including: (1) The pleadings were, as of the March 31, 2011 conference, in considerable flux and remain in flux. (2) Defendant Coach Services, Inc. had not been served, and service efforts were finally made *after* the conference. Coach Services, Inc.’s answer is not due until May 31, 2011, and Coach Services, Inc. obviously did not participate in the March 31, 2011 conference because plaintiff’s counsel had not made any effort to serve it.

1 counsel's agreement to generate an initial draft of a proposed discovery plan, as is customary
2 for plaintiff's counsel to do. Coach received no reply. On April 14, 2011, Coach again
3 requested that plaintiff's counsel share their discovery plan. Plaintiff's counsel did not share
4 their discovery plan. Later on April 14, 2011, Coach sent its proposed discovery plan to
5 plaintiff's counsel. Plaintiff's counsel indicated that they would not provide any discovery plan
6 before April 15, 2011 at the earliest, which is after the deadline for filing a proposed discovery
7 plan under Federal Rule of Civil Procedure 26(f)(2). Coach therefore submits its proposed
8 discovery plan.

9 **I. INITIAL DISCLOSURES**

10 Coach submits that initial disclosures are premature for some of the same reasons the
11 discovery conference was premature. In addition, Coach contends that initial disclosures
12 should not be necessary as to class claims, because plaintiff has not made a prima facie
13 showing that the requirements of Federal Rule of Civil Procedure 23 have been met or can be
14 met. *See Mantolete v. Bolger*, 767 F.2d 1416, 1424 (9th Cir. 1985) (holding that trial court
15 may require "a prima facie showing [of] the class action requirements of [Rule 23]" prior to
16 permitting class discovery). Defendants have filed a motion to strike all class allegations. No
17 class-issue initial disclosure is appropriate *from defendants* pending the Court's decision on
18 that motion.

19 Coach provided initial disclosures on April 14, 2011, subject to the limitations noted.

20 **II. SUBJECTS OF DISCOVERY**

21 Coach submits that discovery should be limited to the named plaintiffs' claims, as no
22 prima facie showing has been made that the requirements of Federal Rule of Civil Procedure 23
23 have been met or can be met. *Mantolete*, 767 F.2d at 1424. The subjects of discovery would
24 therefore be: (1) issues surrounding plaintiff Gina Kim's eBay listing; (2) issues surrounding
25 Coach's law firm's investigation of that listing; (3) issues surrounding alleged damages
26 suffered by Ms. Kim, especially purported emotional distress; and (4) issues surrounding

1 plaintiff's counsel Jay Carlson's and Christopher Carney's defamation of Coach. The principal
2 topics of discovery will be Ms. Kim's purported emotional distress damages (necessitating
3 thorough discovery of Ms. Kim's physical and emotional health, such as Rule 35 examinations
4 of Kim and depositions of parents, boyfriends, dates, spouse (if any), work supervisors, co-
5 workers, physicians, psychologists, psychiatrists, friends, neighbors, etc.) and Ms. Kim's
6 lawyers' purported grounds for stating publicly that Coach did no investigation before
7 concluding that Ms. Kim was trying to sell a counterfeit Coach product.

8 Coach further submits that, if the Court determines that class discovery is appropriate,
9 discovery should be phased such that certification issues are addressed first, and class discovery
10 should be completed by August 5, 2011. Coach submits that a deadline for merits-based
11 discovery is inappropriate at this time. If the Court orders class certification, the parties can
12 confer again to propose deadlines for merits-based discovery.

13 **III. ELECTRONICALLY STORED INFORMATION**

14 Plaintiffs' counsel has stated that they will produce all information and documents in
15 paper form. Coach will do the same, or produce in PDF form.

16 **IV. PRIVILEGE**

17 The allegations in this case surround actions taken by Coach's attorneys in New York.
18 Plaintiffs' counsel have made very direct allegations about the motivation for those actions. In
19 order to provide a complete defense, Coach may need to disclose certain information that is
20 subject to the attorney-client privilege. Coach intends to seek agreement from plaintiffs'
21 counsel or an order from the Court limiting any alleged waiver of privilege that may be sought.

22 During the discovery conference, Coach proposed that the inadvertent production of
23 documents protected from discovery by the attorney-client privilege, the attorney work product
24 doctrine, or any other privilege will not waive such documents' privileged and protected status,
25 and that the notice procedure in Federal Rule of Civil Procedure 26(b)(5)(B) for such
26 inadvertent production shall apply. Plaintiffs agreed.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 14, 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 14th day of April, 2011.

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

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