

CATHLEEN BOLEK LLC

Monarch Centre, Suite 302
5885 Landerbrook Drive
Cleveland, Ohio 44124
www.boleklaw.com

ATTORNEYS AT LAW

T 216.464.3004
F 866.542.0743

May 20, 2010

Via electronic mail: cooklaw@centrurytel.net
D. Chris Cook
520 Broadway, Third Floor
Lorain, Ohio 44052

Via electronic mail: wfs@wmslawohio.com
William F. Scully, Jr.
Williams, Moliterno & Scully - Cleveland
2241 Pinnacle Parkway
Twinsburg, OH 44087

Via electronic mail: pgriffith@fordharrison.com
Patricia G. Griffith
Ford & Harrison - Atlanta
Ste. 1900
271 Seventeenth Street, NW
Atlanta, GA 30363

Re: *Equal Employment Opportunity Commission, et al. v. Spitzer Management, Inc. et al*, Consolidated Case No. 1:06-cv-02337-JRA and Member Cases, pending before the Hon. Judge Adams, United States District Court for the Northern District of Ohio

Dear Counsel:

I have now had the opportunity to review, although not thoroughly read, the documents produced Tuesday evening. This letter serves to request that you produce additional documents, as described below. Please be aware that this letter serves as an effort on the part of Plaintiff/Intervenor Okafor to finally resolve the numerous outstanding discovery issues without the necessity of the Court's involvement.

Plaintiff's Request for Production No.4 asks for each Defendant's federal, state and local income tax returns for the period from 2005 through 2009, and, upon completion, 2010. You have not produced a single income tax return. Request No. 4 also asks that you produce annual audit reports, (including full footnote disclosures), but no such reports were produced. The source of the documents you did produce is entirely unclear. Please produce the requested documents.

Request for Production No. 5 asks that Defendants provide a copy of the *complete* personnel file for each person who has been employed as a salesperson by Defendants from January 1, 2006 through January 1, 2009. In other words, we have requested the personnel files of Plaintiff's

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comparators. The caselaw is clear that such information is relevant and discoverable in a case alleging disparate treatment.

In response to this Request, you claim to have produced personnel files for "Identified Minority Sales Personnel." Based on your production, it is impossible to know how you determined which personnel files to produce. It is clear, however, that you did not produce the personnel file of every "Identified Minority Sales Personnel" during the relevant time period. According to employee lists you produced in this case, there are at least six salespersons whom *you* have identified as "black" or "non-white" and whose personnel files you withheld without explanation: Ernest Scales, Jason Lockett, Latonio Green, Lindsey Duncan III, Malike Moore, and Rodney Boyd.

More to the point, Plaintiff did not request the personnel files of "Minority Sales Personnel." Plaintiff requested the personnel files of *all salespersons*. Please provide complete copies of the documents requested, or make them available for inspection and copying, immediately.

Interrogatory No. 3 asks that Defendants provide information regarding other employees who have complained of discrimination, retaliation, or harassment. Request for Production No. 6, as well as the subpoena duces tecum that was served on Mr. Giardini in February 2010, request all documents that relate to those complaints. You have repeatedly stated, to me, to the Court and in response to various discovery requests, that you are "unaware" of other individuals who filed charges during the relevant time period. You have refused to take the steps required of you to obtain that information, and you have neither produced the requested documents nor obtained an order quashing the subpoena.

Upon reviewing your document production, it appears that your client, and Mr. Giardini, have failed to fulfill their legal obligations. The documents you produced this week clearly indicate that Spitzer employees Burgman and Moore filed charges with the EEOC or the OCRC during the relevant time period, yet you have repeatedly failed to identify these individuals or to produce a single document relating to their charges. Mr. Giardini failed to produce the requested documents in response to the subpoena.

Plaintiff's Request for Production No. 7, as well as the subpoena served on Mr. Giardini, requests all documents relating to Defendants' investigation into Plaintiff's complaints, including all emails, notes and statements. The Court has held that Defendants have waived any privilege with regard to those documents by virtue of their asserted defense that it promptly investigated the complaints and took appropriate remedial action. According to the documents you produced, Mr. Giardini received emails from Rex Davidson regarding the "Okafor/Esther Kim incident," Spitzer employees Kennedy, Ashbrook, Davidson, Pawlak and Procacini were interviewed by Mr. Giardini regarding Mr. Okafor's complaints in January 2007, and statements were taken from various employees of Spitzer regarding Mr. Okafor on May 8, 2006 (which statements were later typed up on May 30, 2006). Please produce the emails, notes of the interviews of Kennedy, Ashbrook,

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Davidson, Pawlak and Procacini in January 2007, statements taken on May 8, 2006 (in addition to the typed versions), as well as any other notes, memorandum, and other documents relating to whatever "investigation" into Plaintiff's complaints may have been conducted.

The documents you did produce are obviously incomplete, out of order and otherwise problematic. For example, the personnel file of Ann Jones contains five of the six page fax received by Spitzer from UCExpress. Please produce page six of that fax.

Based on a review of the personnel files you produced, UCExpress is apparently an entity employed by Spitzer to handle its Unemployment Compensation claims. UCExpress documents which should be included in some of the personnel files seem to be missing. For example, the personnel file of Sir Evans contains a document labeled "Termination Codes," which lists the reasons for Mr. Evans' termination. This document is not included in any of the other personnel files, despite the fact that a number of the other employees filed claims for Unemployment Compensation. Please produce the Termination Codes for all of the employees for whom we requested personnel files.

Similarly, you produced a "Veracity Analysis Questionnaire" as part of Jerome Henderson's personnel file. Please produce this questionnaire for all of the employees to whom it was administered.

While the other personnel files contain a print-out of each employee's questions and answers from the "Preventing Discrimination in your Dealership for Employees" program, that document is missing from Ms. Ardelia Holmes' file. The file does, however, contain her final results, so it is clear that she did take the questionnaire. Please produce her questions and answers immediately.

The billing records you produced are out of order to such an extent that it is impossible to determine whether the file is complete. You produced numerous first pages (where it is clear from the face of the document that a second page exists) without the corresponding second page. Similarly, there are multiple examples of second pages that lack a corresponding first page. It is not Plaintiff's obligation to attempt to reconstruct these documents. Please produce the complete billing file in its appropriate order and any other documents that may be responsive to the subpoena that was served on Mr. Giardini in February.

Please produce the Exhibits to the arbitration brief, labeled "Spitzer's Initial Brief," as well as any briefs filed by Chrysler in that matter. Exhibits A and B to that brief appear to be particularly relevant to the issues in this case, and the other Exhibits may be relevant as well. In any event, Plaintiff is entitled to a complete documents. The brief also refers to discovery that was exchanged between Spitzer and Chrysler; we ask that you produce that as well.

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In March 2009, you responded to the EEOC's First Set of Requests for Production, Nos. 15, 17 and 19, respectively, as follows: "These documents are currently being sought out. Defendant will supplement within 14 day with the lease for office space for Spitzer Autoworld Cleveland, LLC and Spitzer Motor City, Inc.," "These documents are currently being sought out. Defendant will supplement within 14 days with signature cards authorizing individuals to open accounts, sign checks, etc." and "Spitzer Management has a contract with ADP and will supplement a copy of said contract within 14 days." To date, you have failed to supplement those responses, and none of those documents have not been produced. Please produce them immediately.

As explained, the purpose of this letter is to allow Defendants and Mr. Giardini a final opportunity to engage in a meaningful discovery process. It is not our desire to file a motion for discovery sanctions, a motion to show cause why Mr. Giardini should not be held in contempt for wilfully violating a subpoena, or take other action relating to your false and incomplete discovery responses. We would prefer to simply litigate this case on the merits after a full and fair opportunity to conduct meaningful discovery. Defendants have, however, failed to cooperate in that process, in violation of their obligations.

Please be advised that it is Plaintiff Okafor's position that Defendants' repeated failure to provide complete and truthful discovery responses is willful and in bad faith, and has served to thwart Plaintiff's legitimate discovery efforts. Accordingly, Plaintiff requests that you produce the requested documents and information immediately, as well as a satisfactory explanation for the false answers to discovery that have been provided.

Thank you for your anticipated cooperation. We look forward to your prompt reply.

Sincerely,

/s/ Cathleen Bolek

Cathleen Bolek

cc Amy S. Glesius
Solvita A. McMillan