

GANGEMI LAW FIRM, P.C.

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: 8/4/11

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SALVATORE G. GANGEMI
DIRECT DIAL EXTENSION: 112
sgangemi@gangemilaw.com

August 3, 2011

MEMO ENDORSED

The Application is granted.

SO ORDERED:

Paul G. Gardephe
Paul G. Gardephe, U.S.D.J.

Dated: Aug 4, 2011VIA FACSIMILE

The Honorable Paul G. Gardephe, U.S.D.J.
United States District Court, S.D.N.Y.
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007-1312

RE: Battino, et al. v. Cornelia Fifth Avenue Spa, LLC, et al.
U.S. District Court, S.D.N.Y., 09 CV 4113 (PGG)(MHD)

Dear Judge Gardephe:

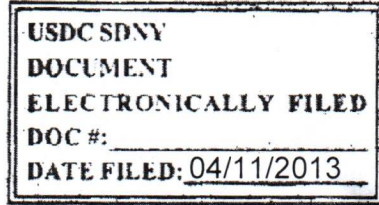
We, together with Levy Davis & Maher, LLP, represent the 62 plaintiffs in this action and write to request a three-week extension of time within which to file a motion for default judgment against Cornelia Essentials, LLC ("Essentials"). Defendants do not oppose this request on the condition that the schedule set forth in this Court's Order, dated June 29, 2011 (DKT 129) (hereinafter "June 29 Order"), a copy of which is provided with this letter, is also revised to extend other deadlines. This is the first request for such an extension.

The parties appeared before the Court for a status conference on June 29, 2011. As the Court is aware, most of the defendants in this action, with the exception of Michael Canizales and Essentials, are either defunct or in bankruptcy. Essentials has never filed an answer or otherwise responded to the Third Amended Complaint and Jury Trial Demand. Following the status conference, the Court entered the June 29 Order, which stated that "Plaintiffs' motion for default judgment, if any, against Defendant [Essentials], will be filed by August 15, 2011." (DKT 129). In addition, the Court ordered that "Any post-discovery dispositive motions will be filed by September 8, 2011," and that the parties shall appear for a status conference on September 8, 2011. (*Id.*)

Since the Court's June 29 Order, we have attempted to secure affidavits on damages from all 62 plaintiffs in support of the proposed motion for default judgment. However, we have not yet received all of the affidavits, because many of the plaintiffs have been unavailable as a result of summer vacations or otherwise.

We want to provide those plaintiffs, who have not yet submitted their affidavits, with additional time to do so. Moreover, the undersigned, who has been communicating with plaintiffs on this issue, will be away on vacation from August 5, 2011 until August 12, 2011. We do not anticipate receiving all of the affidavits in time for the August 15 motion deadline.

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK



SARAH ANN BATTINO, ET AL.,

Plaintiffs,

09 Civ. 4113 (LGS) (MHD)

- against -

CORNELIA FIFTH AVENUE, LLC, ET AL.,
DefendantS.

ORDER OF REFERENCE
TO A MAGISTRATE JUDGE

The above-entitled action is referred to the designated Magistrate Judge for the following purpose(s):

General Pretrial Supervision (includes scheduling, discovery, non-dispositive pretrial motions, and settlement but excludes any motion to amend the pleadings following the district judge's ruling on a dispositive motion)

Consent under 28 U.S.C. §636(c) for limited purpose (e.g., dispositive motion, preliminary injunction)

Purpose: _____

Specific Discovery Dispute: _____

To hear and report on motion
[] dispositive [] non-dispositive

To hear and report on habeas corpus petition
 To hear and report on Social Security appeal

Discovery disputes when the district judge is unavailable.

Dispositive motion (i.e., motion requiring a Report and Recommendation)

Settlement*

Particular motion: _____

Inquest on Damages

All such motions: _____

*Do not check if already referred for General Pretrial Supervision which includes settlement.

SO ORDERED.

Lorna G. Schofield

United States District Judge

DATED: New York, New York
April 11, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SARAH ANN BATTINO et al.,

Plaintiffs,

-against-

CORNELIA FIFTH AVENUE, LLC et. al.,

Defendant.

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE:

FILED
APR 12 2013
CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
4/12/13
ORDER
09 Civ. 4113 (JPO) (MHD)

It is hereby **ORDERED** that the settlement conference previously scheduled on May 21, 2013 has been rescheduled for **THURSDAY, MAY 23, 2013, at 2:00 P.M.**, at which time you are directed to appear in **Courtroom 17D**, 500 Pearl Street, New York, New York 10007-1312. Any requests for adjournment of this scheduled conference must be in writing, with copies to all other parties, and must be preceded by reasonable efforts by the requesting party to obtain the consent of those parties.

The parties are to take note of the following requirements for settlement conferences before the undersigned:

1. The parties are **expected to have spoken with each other about their respective settlement positions** prior to the settlement conference.

2. The parties are directed to bring with them any documents (including any deposition transcripts) that they consider pertinent

to their position on the settlement value of the case.

3. Clients are expected to either attend the conference or be available via telephone during the conference.

Dated: New York, New York
April 12, 2013

SO ORDERED.



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Order have been sent today by fax to:

Salvatore G. Gangemi, Esq.
Gangemi Law Firm, P.C.
82 Wall Street, Ste. 300
New York, NY 10005
Fax: (212) 425-0635

Jonathan Adam Bernstein, Esq.
Levy Davis & Maher, LLP
39 Broadway, Suite 1620
9th Floor
New York, NY 10006
Fax: (212) 371-0463

Daniel Patrick O'Brien, Esq.
Diane Marie Pietraszewski,
Esq.
Richard Knight Muser, Esq.
Clifton Budd & DeMaria, LLP
420 Lexington Avenue
New York, NY 10170
Fax: (212) 842-5237

Peter T. Shapiro, Esq.
Lewis Brisbois Bisgaard &
Smith LLP (Water St)
77 Water Street, Suite 2100
New York, NY 10005
Fax: (212) 232-1399

Respectfully submitted,

CLIFTON BUDD & DeMARIA, LLP
Attorneys for Defendant
Richard Aidekman

By: 

Richard K. Muser (RM - 5220)

Daniel P. O'Brien (DO - 3038)

420 Lexington Avenue, Suite 420

New York, New York 10170-0089

Tel: 212- 687-7410

Fax: 212-687-3285

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dpobrien@cbdm.com

TO: Peter T. Shapiro , Esq.
199 Water Street, 25th Floor
New York, New York 10038
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pshapiro@lbbslaw.com

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Levy Davis & Maher LLP
29 Broadway, 9th Floor
New York, New York 10006
Tel: 212-371-0033
Fax: 212-371-0463
jbernstein@levydavis.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SARAH ANN BATTINO et al., :
 :
 Plaintiffs, :
 :
 -against- :
 :
 CORNELIA FIFTH AVENUE, LLC et. al., :
 :
 Defendant. :
-----x
MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE:

ORDER
09 Civ. 4113 (JPO) (MHD)

1/28/13

It is hereby **ORDERED** that the settlement conference previously scheduled in the above-captioned action for February 20, 2013 has been rescheduled for **MONDAY, MARCH 4, 2013, at 10:00 A.M.**, at which time you are directed to appear in **Courtroom 17D**, 500 Pearl Street, New York, New York 10007-1312. Any requests for adjournment of this scheduled conference must be in writing, with copies to all other parties, and must be preceded by reasonable efforts by the requesting party to obtain the consent of those parties.

The parties are to take note of the following requirements for settlement conferences before the undersigned:

1. The parties are **expected to have spoken with each other about their respective settlement positions** prior to the settlement conference.

2. The parties are directed to bring with them any documents (including any deposition transcripts) that they consider pertinent

to their position on the settlement value of the case.

3. Clients are expected to either attend the conference or be available via telephone during the conference.

Dated: New York, New York
January 28, 2013

SO ORDERED.



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Order have been sent today by fax to:

Salvatore G. Gangemi, Esq.
Gangemi Law Firm, P.C.
82 Wall Street, Ste. 300
New York, NY 10005
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Smith LLP (Water St)
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Fax: (212) 232-1399

CLIFTON BUDD & DeMARIA, LLP

Attorneys for Defendant
Richard Aidekman
420 Lexington Avenue, Suite 420
New York, New York 10170
Phone: (212) 687-7410
Fax: (212) 687-3285

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SARAH ANN BATTINO, NORICA BULICA,	:	
RENATA CACACE, ALEJANDRA	:	
CANDELARIO, SANDRA CAPUTO, HALLIE	:	
CLARKE, ANIKO COCINESCU, ELENA	:	DEFENDANT RICHARD
COTETO, JOHN DEGIORGIO, JOSEPH	:	AIDEKMAN'S REPLY TO MICHAEL
GUARINO, EMILY HOFFMAN, RAMONA	:	<u>CANIZALES' CROSS-CLAIM</u>
IONESCU, ADRIANA MOISE, MONICA	:	
O'LEARY, VALERIE PHILIP, JENNIFER	:	Case No.: 09 CV 4113
RATHBUN, MONICA REDMAN, ZOITA	:	
SORINA RUS, SCOTT SACHS, NATALIA	:	<i>ECF CASE</i>
SANDU, ANA SANTOS, REHKA	:	
SUNDARESH, SVETLANA TABAGARI,	:	
ALICIA VILLANOVA, SOFIA VISAN,	:	
AMANDA WELLS, LISA YAEGER-WOJCHIK,	:	
and ELENA ZAYAS, individually, and on behalf	:	
of all others similarly situated and as class	:	
representatives,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
CORNELIA FIFTH AVENUE, LLC; SPA	:	
CHAKRA FIFTH AVENUE, LLC; CORNELIA	:	
ZICU INTERNATIONAL, LLC; CORNELIA	:	
INTERNATIONAL 401(K) PLAN; RICHARD	:	
AIDEKMAN; ELLEN SACKOFF; and	:	
MICHAEL CANIZALES,	:	
	:	
Defendants.	:	
	:	
-----X		

Defendant RICHARD AIDEKMAN, by and through his attorneys, CLIFTON BUDD & DEMARIA, LLP, for his reply to the Cross-Claim of Defendant Michael Canizales in the above-captioned matter alleges as follows:

143. Denies the allegations contained in paragraph 143 and refers to the referenced documents for the contents thereof.
144. Denies the allegations contained in paragraph 144 and refers to the referenced document for the contents thereof.
145. Denies the allegations contained in paragraph 145 and refers to the referenced document for the contents thereof.
146. Denies the allegations contained in paragraph 146 and refers to the referenced document for the contents thereof.
147. Denies the allegations contained in paragraph 147 and refers to the referenced document for the contents thereof.
148. Denies the allegations contained in paragraph 148 and refers to the referenced document for the contents thereof.
149. Denies the allegations contained in paragraph 149.
150. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 150.
151. Denies the allegations contained in paragraph 151.
152. Admits that Canizales has sent a letter to Defendant claiming indemnification, but except as so admitted, denies the allegations contained in paragraph 152.

153. Denies the allegations contained in paragraph 152.

154. Denies the allegations contained in paragraph 153.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Cross-Claim fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Cross-Claim is barred, in whole or in part, by the doctrine of laches.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The Cross-Claim is barred, in whole or in part, by the doctrine of estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Cross-Claim is barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Cross-Claim is barred, in whole or in part, by the doctrine of unclean hands.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Cross-Claim is barred, in whole or in part, by the doctrine of *in pari delicto*.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The Cross-Claim is barred, in whole or in part, by the doctrine of ratification, confirmation, and acquiescence.

WHEREFORE, Defendant demands judgment dismissing the Cross-Claim in its entirety and requests that this Court grant Defendant its costs, attorneys' fees and such other and further relief that this Court deems just and proper.

Dated: July 14, 2009
New York, New York

GANGEMI LAW FIRM, P.C.

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SALVATORE G. GANGEMI
DIRECT DIAL EXTENSION: 112
sgangemi@gangemilaw.com

August 3, 2011

MEMO ENDORSED

The Application is granted.

SO ORDERED:

Paul G. Gardephe
Paul G. Gardephe, U.S.D.J.

Dated: Aug 4, 2011**VIA FACSIMILE**

The Honorable Paul G. Gardephe, U.S.D.J.
United States District Court, S.D.N.Y.
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U.S. District Court, S.D.N.Y., 09 CV 4113 (PGG)(MHD)

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GANGEMI LAW FIRM, P.C.
The Honorable Paul G. Gardephe, U.S.D.J.
August 3, 2011
Page 2

Consequently, we propose the following revisions to the schedule set forth in the June 29 Order:

1. Plaintiffs' motion for default judgment, if any, against Defendant Essentials, will be filed by **September 2, 2011**;
2. Any post-discovery dispositive motions will be filed by **September 29, 2011**;
3. There shall be a status conference on **October 6, 2011, at 10 a.m.** The undersigned has conferred with the Court's clerk, Abe Cho, who has confirmed that the Court is available for a conference on this date. In addition, the parties are all available on this date.

We thank the Court for its consideration of this matter.

Respectfully submitted,



Salvatore G. Gangemi

Enc.

cc: **VIA E-MAIL**
Richard K. Muser, Esq.
Attorney for Defendants Cornelia Fifth Avenue, LLC;
Cornelia Zicu International 401(k) Plan; Richard Aidekman; and Ellen Sackoff.

Peter Shapiro, Esq.
Attorney for Spa Chakra Fifth Avenue, LLC and Michael Canizales.

Jonathan Bernstein, Esq.
Attorney for Plaintiffs

GANGEMI LAW FIRM, P.C.

The Honorable Paul G. Gardephe, U.S.D.J.

August 3, 2011

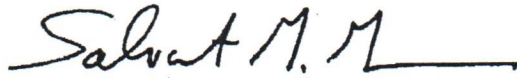
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Salvatore G. Gangemi

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cc:

VIA E-MAIL

Richard K. Muser, Esq.

Attorney for Defendants Cornelia Fifth Avenue, LLC;

Cornelia Zicu International 401(k) Plan; Richard Aidekman; and Ellen Sackoff.

Peter Shapiro, Esq.

Attorney for Spa Chakra Fifth Avenue, LLC and Michael Canizales.

Jonathan Bernstein, Esq.

Attorney for Plaintiffs