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JUN 4 - 2012
CHAMBERS OF
COLLEEN McMAHON
Via Facsimile (212-805-6326)

June 4, 2012

6/4/2012
No extensions
Period
The end
MEMO ENDORSED

Honorable Colleen McMahon
United States District Judge
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 20007

Re: Pippins, et al. v. KPMG LLP, No. 11-CV-0377 (CM) (JLC)

Dear Judge McMahon:

We represent the Defendant KPMG LLP ("KPMG") in the above-entitled action. We write to respectfully request that the Court deny Plaintiffs' request for a second extension of the deadline to file their motion for summary judgment. The parties knew of the schedule and circumstances of which Plaintiffs now complain when the Court granted the prior extension request and ordered that there be "no further extensions" (ECF No. 228). KPMG expects to file its motion for Summary Judgment (discussed with the Court at the March 2, 2012 Status Conference) by the current deadline.

First, Plaintiffs' assertion that they received about 74,940 pages of discovery "[o]ver the past two weeks" is incorrect. KPMG completed its production in a timely manner, producing all documents on or before May 15, 2012, except for: (1) four documents produced on May 29, 2012; and (2) about 400 documents produced on May 31, 2012 (pleadings and publicly available filings from other wage and hour cases that Plaintiffs were long told would be produced as a courtesy at the end of the expedited discovery period given their lack of relevance).

Further, Plaintiffs have long been aware of the expected volume of the production, which resulted directly from the breadth of Plaintiffs' discovery requests. Notwithstanding the Court's instructions during the March 2, 2012 Status Conference to "narrowly tailor a modicum of discovery" (ECF No. 154 at 25), Plaintiffs refused to withdraw all but one of their original requests. In response, KPMG worked extremely hard to produce a tremendous volume of requested documents - including personnel manuals and policies, performance evaluation process manuals and templates, job descriptions and postings, and many volumes of training materials and practice manuals detailing KPMG's audit methodology - as well as electronically stored information (ESI) for a variety of corporate custodians and employment records for the

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Named Plaintiffs. After having insisted on the production of these documents – many of which KPMG believed were not relevant to the current proceeding – Plaintiffs should not now complain about the volume of discovery.¹

Finally, the parties agreed to the May 31, 2012 deposition date on May 8, 2012 – just one day after the Court set the present schedule (and the inability to identify an earlier date was one of the primary reasons for the prior extension request). The deposition held on June 1, 2012 was scheduled only after Plaintiffs were unable to complete the witness' deposition during the two prior full days of testimony – on April 25 and May 11. Moreover, it was Plaintiffs, not KPMG, who noticed the thirteen (13) Rule 30(b)(6) topics that this witness covered over three full days.

For the reasons set forth herein, KPMG respectfully requests that the Court deny Plaintiffs' request for a second extension of the deadline to file a motion for summary judgment.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen M. Kenney".

Colleen M. Kenney

cc: Counsel of Record (Via Email)

¹ During the May 3, 2012 hearing to resolve certain discovery disputes, Magistrate Judge Cott cautioned Plaintiffs about the amount of discovery sought during this expedited period stating:

There's two weeks of discovery left in the compressed discovery period you're taking. Judge McMahon did not contemplate the litany -- I think if she had gotten your letter [seeking additional discovery] she would have written "denied" on it probably in a lot of respects because it went beyond what she was contemplating was going to happen here. You're having a lot of production. You're taking a lot of depositions and the like. So let's be realistic about what could even be achieved.

May 3, 2012 Hearing Tr. at 34:10-17 (ECF No. 231); *see id.* at 25:7-12 ("You have two weeks of discovery to go, unless Judge McMahon says otherwise. You have all this information that they are committed to providing or have provided. I don't know why realistically, why beyond that you're going to have time or deserve getting more than this at this moment in time.").