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October 30, 2019

Via ECF
Hon. Lewis A. Kaplan, U.S.D.J.
U.S. Courthouse, S.D.N.Y.
500 Pearl Street, New York, NY 10007

Re: *Sands v. Bauer Media Group USA, LLC, No. 17-cv-9125*

Dear Judge Kaplan:

We write on behalf of Bauer Media Group USA, LLC (“Bauer”) to correct misstatements that Plaintiff Steve Sands’ (“Sands”) counsel, Richard Liebowitz, makes in support of Sands’ motion for Your Honor’s recusal (Dkt. 68).

In his declaration, Mr. Liebowitz states, “Plaintiff did not make a settlement demand in this action.” Dkt. 70, at 1 ¶3. In his memorandum of law, he states, “Sands never made a settlement demand in this proceeding; he only ever sought judgment on the merits against Bauer Media.” Dkt. 69, at 9 n.1. These are false.

Annexed to this letter is a copy of an email that David Korzenik and I received from Mr. Liebowitz on December 12, 2017 – several days after we first advised him that we would be appearing for Bauer in this case. In the email, he stated: “I spoke with my client and I am authorized to make an offer of \$25,000. We look forward to hearing from you.” *Id.*

Subsequently, as Your Honor referenced in the Court’s September 18, 2019 opinion, Sands’ counsel “announced a \$25,000 settlement demand” at the parties’ initial conference on February 6, 2018 – a conference Mr. Liebowitz himself did not attend. *See* Dkt. 56, at 7; 2019 WL 4464672, at *3; *see also* Dkt. 49, at 5 n.4.

Sands and his counsel had already filed – and closed – some 30 infringement actions against other media companies by December 2017. *See generally* Dkt. 57, at 1-45. Against Bauer, Sands did not solely seek “judgment on the merits.” At the outset, he sought a quick settlement. And his counsel reiterated Sands’ settlement demand even as they promised to provide photo licensing information – information that would have aided in analyzing the objective merits of Sands’ claims – which never came.

Bauer reserves the right to respond further to Sands’ recusal motion.

Respectfully submitted,
/s/Terence P. Keegan
Terence P. Keegan
David S. Korzenik

Subject: Sands v. Bauer Media

Date: Tuesday, December 12, 2017 at 7:12:24 PM Eastern Standard Time

From: Richard Liebowitz

To: David Korzenik, Terence Keegan

Confidential Subject to FRE 408

David and Terence,

I spoke with my client and I am authorized to make an offer of \$25,000. We look forward to hearing from you.

Thank you.

Best,

Richard Liebowitz, Esq.
Liebowitz Law Firm, PLLC
t.516-233-1660

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