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February 26, 2018

George Krueger
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2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222

Re: *Hallmark v. Dickens*, 17-cv-02149 (LDW)

Dear George:

I am following up on our telephone call Thursday, February 22, 2018,

1. We would like to depose persons currently and formerly employed by Hallmark (and others) having information reasonably calculated to lead to the discovery of admissible evidence. Obviously, we will seek leave of court to conduct more than ten depositions, once we have agreed upon our proposed deponents as outlined below. In addition to the Third Party Defendants (Group 1), they are:

Group 2

- a. **John Chase** – VP Sales – Parodi’s direct supervisor at HM, identified in privilege log (Lines 22, 36, 39, 41, 44, 45, 46, 28) as having information relevant to Dickens selling cards from Enfield site.
- b. **Jennifer Seyller** – VP Retail Product Development-- In an email (HALLMARK0001186) on 4/11/17, Jennifer Seyller, VP of Hallmark wrote the following to Ron Parodi, “Barry sent a note saying what a great asset you’ve been” [relative to the visit to Dickens forming the trespass claim].
- c. **Barry Katz** – Associate General Counsel – Parodi wrote to Barry Katz, BK writes to Parodi regarding what action is necessary to “gain entry to Dickens” [discussing the actions forming the basis for the trespass claim, prior to it occurring. Katz has also had communications with Dickens going back to 1991 regarding “sound cards.”].
- d. **John Watson** – President Hallmark Retail. Wrote the following to Ron Parodi” “.....for the “above and beyond” work on the Dickens project. Much appreciated.” [relative to Parodi’s actions claimed by Defendants to constitute a trespass].
- e. **Shannon Frost – VP Operations -- received an email from Scott O’Dell re Dickens (line # 45 on privilege log).**

- f. **Shauna Schwart** – VP Specialty Retail, line 44 (re Dickens & Enfield).
- g. **Tony Barbella** – Sales Executive line 39 discussing Dickens.

Group 3

- h. **Marty Feuer** – President, Laurie’s Hallmark. In an email from 4/12/17 (HALLMARK0001110), Feuer wrote the following to Ron Parodi, “Parodi the undercover agent, cool!!!” – relative to Parodi’s visit to Dickens constituting the Trespass. How Feuer learned of this information and what he was told are relevant to Defendant’s counterclaim.
- i. **Tony Hofstede** – Closeout Agent - - Information relative to HM closeout items relevant to this lawsuit.
- j. **Molly Biwer** – Sr. VP Public Affairs and Communications. (responsible for press releases on April 17, 2017 and June 12, 2017, related to this litigation).
- k. **Bob Kurland** – Ex. New Business and Trade Development Leader approached Chou and asked Dickens purchase volume.
- l. **Jeff Drum** – Market Development Director, set up booth next to Dicken at Atlanta Show, Chou contacted Drum to buy Hallmark closeouts in March, 2017.

Group 4

- m. **Donald J. Hall, Sr.** – Chairman – Chou sent a letter to Hall in 1993. In response, an attorney for HM called Chou, and Chou also sent several letters to Hall, Sr. 2017.
- n. We reserve the right to call other Hallmark management, i.e., **Donald J. Hall, Jr.** – Chief Executive Officer and **David E. Hall** – President, should information learned during discovery reveal that either has relevant information.

A party may conduct more than ten depositions upon leave of court. The Court should grant such a request if it is consistent with the principles stated in Rule 26(b)(2). *Gross v. Bare Escentuals, Inc.*, No. 03-CV-3089, 2006 WL 3161386, at *1 (S.D.N.Y. Oct. 30, 2006) and the testimony is neither cumulative nor burdensome.

2. Regarding the second item discussed Thursday -- concerning communications with others regarding this lawsuit -- please be advised that Dickens has published some documents including Hallmark’s filed Complaint related to this litigation on its website at the following link to the public.

<http://www.dcgreetings.com/index.php/hallmark>

You have made the following request in your First Discovery Document Request on October10, 2017,

DOCUMENT REQUEST NO. 19

All documents that relate or refer to any communications you have had in connection with this Litigation.

Excluding the communications related to our email “Have you been deposed by Hallmark?” which we have already explained to you in our February 22, 2018 letter, we have provided all your requested documents that relate or refer to any communications Dickens had in connection with this Litigation in Richard’s letter to you on January 11, 2018. (The link in the letter will lead you to a file named “Outside communications” from Bates No. DICKENS000871 to DICKENS001055 containing a total of 184 pages.)

3. We made the same request in our February 25, 2018 discovery document request. In the spirit of reciprocal discovery and adhering to both parties’ agreement to turn over communications regarding this litigation, we are looking forward to receiving your response.

4. Finally, in support of our request for certain documents continued in your privilege log (Lines 24, 35-48), we again request all documents and communications concerning the planning of the visit to Dickens (whether to or from counsel or otherwise). Your privilege log interjects the attorney-client privilege as the basis for opposing release of each such document.

First, as we proffered previously, the attorney-client privilege may be invoked only as to communications that request or give legal advice to a client. Communications concerning Mr. Parodi’s, *et al.*, visit to Dickens is not necessarily the provision of legal advice. Second, we do not believe Mr. Parodi, as a District Sales Manager, is in the “control group” of Hallmark, whose communications with in-house counsel would be privileged under any circumstances. Third, to the extent Mr. Parodi or anyone else has shared these notes, or has shared essentially the same information, with others inside or outside Hallmark who do not share the privilege, the notes would lose any privileged character they otherwise would have.

Finally, even if the communications comply with the above, there would be no privilege because they all concern a wrongful trespass by false pretenses onto Dickens’ property and therefore are excluded from the privilege.

The crime-fraud exception removes the privilege from those attorney client communications that are ‘relate[d] to client communications in furtherance of contemplated or ongoing criminal or fraudulent conduct.’” *United States v. Jacobs*, 117 F.3d 82, 87 (2d Cir.1997) (alteration in original) (quoting *In re John Doe, Inc.*, 13 F.3d 633, 636 (2d Cir.1994)). The exception also abrogates the work product doctrine. *See In re Richard Roe, Inc.*, 168 F.3d 69, 71–72 (2d Cir. 1999).

Chevron Corp. v. Salazar, 275 F.R.D. 437, 451 (S.D.N.Y. 2011).

That a criminal case or civil fraud may not have been perused is irrelevant to determination whether the crime fraud exception abrogates that privilege. *See NXIVM Corp. v. O’Hara*, 241 F.R.D. 109, 137 (N.D.N.Y. 2007) in which the planning and undertaking of a corporate sting using fraudulent representations was held not to be a privileged communications:

“The intent to commit a crime is not protected confidence or secret.”; *In re White*, 42 B.R. 494, 499 (Bankr.E.D.N.Y.1984) (“Communications in the aid of fraud are not protected by the attorney-client privilege.”). **Even though NXIVM and Interfor's fraud upon Ross may not rise to the level of a crime or a civil fraud, for strong public policy reasons, a blatant subterfuge of the adversary system** should not find a safe haven within the fervent clutches of the attorney-client privilege.

...

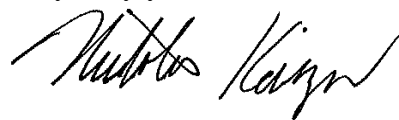
Upon the record presented, O'Hara sent a memorandum directly NXIVM to cease and desist in the further investigation, which included the sting operation. NXIVM and Interfor proceeded forward, nonetheless. No matter the construction, the sting operation discussions and acts are not protected communications nor work product. Abiding by the mandates of DR 7-102(B)(1), O'Hara should have advised Ross, an affected person, much earlier than a year after the events. N.Y. Comp. Codes R & Regs. tit. 22, § 1200.33(b)(1).

For all of these reasons, the sting operation is not protected and hence subject to disclosure. The crime/fraud exception has not been established in regards to the Interfor Report however.

NXIVM Corp. v. O'Hara, 241 F.R.D. 109, 137 (N.D.N.Y. 2007).

Accordingly, immediately provide us with the Hallmark documents contained in privilege log, Lines 24 and 35-48.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nicholas Kaizer', written in a cursive style.

Nicholas Kaizer