



**Arnold B. Calmann**  
(973) 645-4828  
[abc@saiber.com](mailto:abc@saiber.com)

January 3, 2023

**BY CM/ECF**

The Honorable Douglas E. Arpert, U.S.M.J.  
United States District Court  
Clarkson S. Fisher Federal Building  
& U.S. Courthouse  
402 East State Street  
Trenton, New Jersey 08608

**Re: *Oanda Corporation v. Gain Capital Holdings, Inc., et al.***  
**Civil Action No. 20-05784-ZNQ-DEA**

Dear Judge Arpert:

We, along with our co-counsel Wilson Sonsini Goodrich & Rosati P.C., represent Defendants GAIN Capital Holdings, Inc. and GAIN Capital Group, LLC (collectively, "GAIN") in the above matter. We write regarding Plaintiff OANDA Corporation's December 29, 2022 letter (D.I. 152).

We are of course cognizant of the Court's direction in its December 22, 2022 Order (D.I. 151) that no further submissions be made, but we respectfully are compelled to seek the Court's indulgence in accepting the following identifications of factual errors in OANDA's letter. We respectfully submit that the Court would want factual errors to be resolved to ensure that the factual record is accurate for the Court's consideration. Accordingly, we note the following with respect to OANDA's representations on page 6 of its December 29, 2022 letter regarding the testimony of Mr. David Leach:

- OANDA did not inform the Court that Mr. Leach provided an errata to his deposition dated November 18, 2022 (and did not provide the transcript with errata)<sup>1</sup>.
- Mr. Leach's errata states, "I did receive one, yes," in his response to a question asking if he had received a litigation hold notice to preserve documents. Mr. Leach's stated reason for the change was that "I didn't recall at the deposition, but now I do recall."
- Mr. Leach's errata states that he had not "deleted," but "would have updated or revised" the architecture diagrams he referenced during his deposition. Mr. Leach's stated reason for the change was that "[m]y wording of 'delete' was inaccurate."

We thank the Court for its continued understanding and assistance in this matter.

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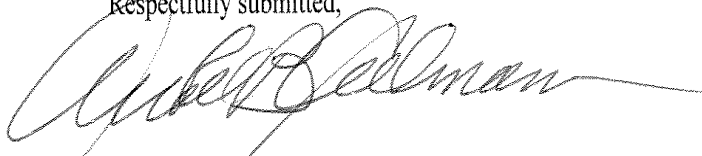
<sup>1</sup> So as not to inundate the Court with paper, GAIN has not attached the transcript with errata here but would provide it at the Court's request.

Honorable Douglas E. Arpert, U.S.M.J.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Arnold B. Calmann", with a long horizontal flourish extending to the right.

Arnold B. Calmann

ABC/kae

cc: Counsel of record (by CM/ECF)