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April 8, 2021

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-BRM-DEA

Dear Magistrate Judge Arpert:

We along with our co-counsel Wilson Sonsini Goodrich & Rosati P.C., represent defendant GAIN in the above matter.

We write to respectfully request that the Court grant an extension of time for GAIN to respond to plaintiff OANDA's Complaint after receiving Judge Martinotti's Opinion and Order of March 30, 2021 (ECF Nos. 51 & 52), that resolved GAIN's motion to dismiss. As we explain, this request is necessitated by the Court's Order that presents an unusual procedural occurrence.

Judge Martinotti's Order dismisses certain aspects of OANDA's Complaint, while providing OANDA an opportunity to amend to attempt to overcome those deficiencies. We attempted to determine whether OANDA intended to file an amended pleading, but OANDA refused to disclose whether it would do so. Moreover, OANDA is unwilling to agree to an extension of time for GAIN to respond to the current Complaint until after the deadline to amend the Complaint has passed, which if agreed upon, would permit GAIN to file a single, more efficient and cohesive response to either the current Complaint as is or the amended Complaint.

By way of background, as Your Honor is aware, GAIN's Notice of Motion pursuant to Rule 12(b)(6) moved "for an Order dismissing Plaintiff Oanda Corporation's . . . Complaint" for failure to state a proper claim. (ECF No. 24). Thus, GAIN moved to dismiss *all claims* in the case. However, Judge Martinotti's Opinion granted-in-part and denied-in-part GAIN's motion directed to all claims. (ECF No. 52) The Order seemingly requires that GAIN respond to the Complaint within 14 days of that Order. With some of the claims yet to be amended (assuming OANDA decides to do so), and thus unknown to GAIN at this time, the Order results in GAIN ostensibly being required to respond in piecemeal fashion.

We submit that neither Rule 12(b) nor Local Civ. Rule 12.2 squarely addresses the issue

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here: Where GAIN challenged *all* claims for relief but the Court denied the motion as to certain claims, whether GAIN now needs to answer claims not otherwise dismissed, or may it await the filing of the amended pleading to respond to all claims at one time in order to avoid a piecemeal pleading process? If there is a requirement that GAIN respond in piecemeal fashion now, it would mean it would have to answer as to the claims that remain, and then respond again with another pleading when and if an amended pleading is filed, resulting in an unnecessary complexity of pleadings in the record of the case.

Since entry of the Court's Order, GAIN has asked Plaintiff OANDA whether it intends to file an amended complaint as permitted by the Court's Order. OANDA's response was that it was considering its options and refused to commit whether it will or will not amend the Complaint.

OANDA's unwillingness to inform us whether it will be filing an amended pleading, and its unwillingness to agree to an extension of the time for GAIN to respond with a single, unified response rather than in piecemeal manner, is contrary to the efficient and orderly administration of this case. The scope and content of the claims for relief in the Complaint directly impact GAIN's defenses and the scope of discovery.

How can GAIN apportion and focus its discovery without a full understanding of the claims being asserted? Assuming OANDA does file an amended pleading, until it does so GAIN cannot determine whether such pleading is subject to another motion to dismiss, or whether it has met Judge Martinotti's directives. How can Your Honor determine the appropriate scope of discovery or even whether certain discovery should be excluded without an understanding of the full scope of the claims in the case? These practical, real world considerations militate in favor of an extension of time to ensure that the parties and the Court avoid any unnecessary duplication or expenditures of time and effort before learning exactly what is in and out of this case.

In light of the procedural uncertainty resulting from attempting to reconcile the applicable rules with the facts here, the Court's ability and discretion to "set[] a different time" for responding after a Rule 12(b) motion under Fed. R. Civ. P. 12(a)(4), and to avoid piecemeal litigation, it is respectfully requested that the Court execute the below Order that GAIN answer or otherwise respond within 14 days subsequent to OANDA filing its amended Complaint or the deadline for OANDA to do so (June 1, 2021) has passed.

In light of these circumstances and the uncertainty relating to the question of whether an amended pleading is to be filed, we also respectfully request that Your Honor defer any demand for a Rule 26(f) conference (for developing the Joint Discovery Plan), including commencement of any discovery, until the pleadings are closed, at which time the Court can consider the appropriateness of setting a date for a Rule 16 Scheduling Conference. As is the usual practice in our Court, the setting of the date for the Rule 16 Scheduling Conference engenders the schedule for a Rule 26 conference.

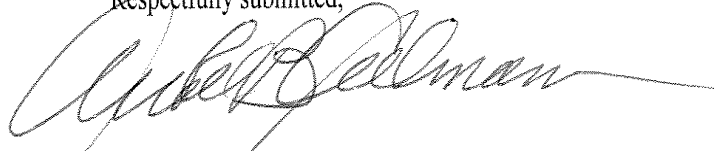
We thank the Court for its consideration, and look forward to hearing from Your Honor at the Court's earliest convenience.

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Respectfully submitted,



Arnold B. Calmann

cc: Counsel of record (by CM/ECF)

The Court having considered the foregoing, and for other and good cause having been shown, it is on this 9th day of April, 2021,

ORDERED, that defendant GAIN answer or otherwise move in response to any amended Complaint filed by plaintiff OANDA pursuant to the Order of March 30, 2021 within 14 days subsequent to OANDA filing its amended Complaint, or alternatively the deadline for OANDA to do so of June 1, 2021 has elapsed; and it is further,

ORDERED, that the date for the parties' Rule 26 meet and confer conference, and the date for commencement of any discovery proceedings as well as the date for a Rule 16 Scheduling Conference are hereby adjourned until further Order of this Court.



HON. DOUGLAS E. ARPERT
UNITED STATES MAGISTRATE JUDGE