

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**SPIRAL DIRECT, INC. and SPIRAL
DIRECT, LTD.,**

Plaintiffs,

v.

Case No. 6:15-cv-00641-JA-TBS

BASIC SPORTS APPAREL, INC.

Defendant.

**RESPONDENT AND NON-PARTY, SIMON PROPERTY GROUP, INC.'S,
MOTION TO QUASH SUBPOENAS, ALTERNATIVELY, MOTION TO
LIMIT DISCOVERY AND ENLARGE TIME TO SERVE
OBJECTIONS TO MODIFIED SUBPOENAS AND INCORPORATED
MEMORANDUM OF LAW IN SUPPORT**

Respondent and non-party, SIMON PROPERTY GROUP, INC. ("Simon"), moves pursuant to Federal Rule of Civil Procedure 45(d) to quash six subpoenas for documents served by Plaintiffs, SPIRAL DIRECT, INC. and SPIRAL DIRECT, LTD. ("Plaintiffs"), or in the alternative, moves to limit discovery and for an enlargement of time to serve its objections to any modified subpoenas and in support states as follows:

1. The underlying action concerns claims asserted by Plaintiffs against Defendant, BASIC SPORTS APPAREL, INC., related to disputed trademarks and the declaration of rights of the parties to use said trademarks in the sale of clothing and accessories. [*See Am. Cmplt.*, Doc. 16]. Simon is not a party to the litigation.

2. On May 25, 2016, Plaintiffs served Simon with the six subpoenas (collectively, the "Subpoenas"), which purport to require Simon, a Delaware corporation, with its principal place of business in Indianapolis, Indiana, to produce voluminous records within three business

days – by May 31, 2016 – in Orlando, Florida.¹ [See Subpoenas, attached hereto as Composite **Exhibit A**. See also Affidavit of Melissa Whybrew (“Whybrew Aff.”) at ¶¶ 1-19, attached hereto as **Exhibit B**].

3. The Subpoenas seek information related to numerous entities and individuals associated with six, large shopping malls. The Subpoenas are so broadly worded that they request literally every piece of conceivable information from multiple entities and individuals over a span of several decades. More specifically, the Subpoenas seek voluminous “documents,” which are defined by no less than fifty (50) types/categories of information, including electronically stored information (“ESI”) such as emails and text messages. [Ex. A, Definitions, ¶4.]. The defined “Time Frame” for these “documents” in all of the Subpoenas is from January 1, 1995 [through the present]” - a span of over *twenty-one years*. [Ex. A, “Time Frame”].

4. The Subpoenas not only seek such “documents” from Simon, but seek in excess of *twenty categories* of related or affiliated individuals or entities. Specifically, the Subpoenas request documents from “You” or “Your” which is defined to include, but is not limited to, subsidiary, parent, sister companies, affiliates, employees, agents, managers, accountants, attorneys, consultants and anyone purporting to act for them or on their behalf. [Ex. A, Definitions, ¶1.]²

5. The Subpoenas also go far beyond requesting documents related to the named Defendant.³ The Subpoenas also request all “documents” for six additional individuals or

¹ Plaintiffs’ counsel agreed to extend Simon’s deadline to respond to the Subpoenas up to and including June 21, 2016.

² Other than referencing different malls and some select dates, each of the six Subpoenas is substantively the same.

³ The Subpoenas also appear conflicting and confusing based upon Simon’s limited involvement in the case. The First Amended Complaint and various motions appearing on the docket seem to be directed to a single “Defendant” – Basic Sports Apparel, Inc. The Subpoenas, however, define multiple “Defendants,” which do not appear to be

entities. [Ex. A, Definitions, ¶4 & Doc. Request at ¶¶1-3.] Plaintiffs further expand the request to include any “documents” between Simon and Defendant or the six additional individuals and entities. Specifically, the Subpoenas ask for “[a]ll leases, contracts and related documents” between Simon and the Defendant or the six additional individuals and entities. [Ex. A., Doc. Request at ¶3.]. Additionally, not only are leases and related documents sought, but any emails, correspondence or other communications between Simon and Defendant or the six additional individuals and entities. [Ex. A., Doc. Request at ¶2.]. All such requests are for six malls over a twenty-one year time frame.

6. The Subpoenas do not stop there. The Subpoenas proceed to seek the identity of *every tenant* in six, large scale malls for multiple years, some reaching back as far as *nineteen years ago*, depending on the mall. [See e.g., Ex. A, related to Cielo Vista Mall, Document Requests at ¶¶4-8.]. Not only do the Subpoenas seek documents related to an extended period of time, but they also relate to potentially thousands of tenants. For example, one subpoena is directed to the Houston Galleria which contains over two million square feet of retail space and contains over 400 stores, two hotels, and three office towers. (“Whybrew Aff.” at ¶ 8).⁴ To put this single request into perspective (not including the other requests in the same subpoena), Simon would have to provide “documents” related to over 400 *retail* tenants over a multi-year period from fourteen years ago, not including any tenants in the three office towers. [See e.g., Ex. A, related to the Houston Galleria, Document Requests at ¶¶4-8.]. Simple math on this one

parties to this action, as well as “past and present” companies, agents, employees, etc. of the “Defendants,” all of which are unknown to Simon resulting in its inability to even formulate a response. (“Whybrew Aff.” at ¶ 3).

⁴ The Court is permitted to take judicial notice of the Houston Galleria’s website at <http://www.simon.com/mall/the-galleria/stores> for purposes of a motion to dismiss. See *JB Oxford Holdings, Inc. v. Net Trade, Inc.* 76 F. Supp. 2d 1363, n.10 (S.D. Fla. 1999).

mall and this single request shows that Simon would have to produce “documents” related to over 2,000 tenants (not including the office towers).

7. Additionally, “documents” identifying tenants at these various malls may, in some cases, only be established by the production of leases. (“Whybrew Aff.” at ¶ 10). Simon considers the various rental rates to be confidential commercial information. (“Whybrew Aff.” at ¶ 10). Some leases also include other confidential commercial information, such as percentage rent or tenant improvement allowances. (“Whybrew Aff.” at ¶ 10). Each tenant at all six malls negotiates rent, percentage rent and tenant improvement allowances different from other tenants. (“Whybrew Aff.” at ¶ 10). As a result, it would be harmful to Simon’s business to permit the production of this information as it would then become available to Simon’s competitors and other potential tenants. (“Whybrew Aff.” at ¶ 10). Furthermore, some leases are personally guaranteed and contain the social security numbers and other private information of the individuals. (“Whybrew Aff.” at ¶ 10). Each lease produced would have to be reviewed and such information redacted. (“Whybrew Aff.” at ¶ 10). Additionally, the time and costs of reviewing every lease and redacting such information would be burdensome. (“Whybrew Aff.” at ¶ 10).

8. Based upon the definitions of “You,” “Your,” “Documents,” and “Defendants” Simon will also be required to undertake ESI searches related to countless email accounts for generic requests such as “the Galleria” or other malls for over a twenty year span. [See, e.g. Exhibit A, subpoena referencing Galleria Mall]. To complete the process, Simon would be required to hire a third-party vendor for assistance. (“Whybrew Aff.” at ¶ 24). Not only would such a request impose an undue burden, but it would result in locating documents not relevant to anything related to the underlying litigation, such as maintenance requests, changes in mall hours

for holiday shopping or security information. (“Whybrew Aff.” at ¶ 8). Notwithstanding the irrelevant and open-ended nature of the requests, simply trying to identify whether any documents are responsive is virtually impossible since the requests, as drafted, require Simon to review multiple databases related not only to the six malls, but to any employee, any agent, any affiliate or related entity over all the years in question. Due to the all-encompassing nature of the Subpoenas, Simon would also be required to perform various types of search processes, depending on whether the requested documents concern permanent tenants, short-term tenants, lease files, non-lease documents, financial information or other categories of documents. (“Whybrew Aff.” at ¶¶ 9, 12-25). Depending on the years in question or the type of document, the scope of the Subpoenas would also require Simon to undertake offsite review of thousands of boxes of hard copy records spanning decades. (“Whybrew Aff.” at ¶¶ 14, 16-21). This review would entail searches by numerous individuals in Indiana, Texas, Colorado and Illinois of various hard copy records, including those reflected on an inventory of 44,000 boxes in an Indianapolis, Indiana storage facility. (“Whybrew Aff.” at ¶ 14). With respect to emails concerning the Colorado Mills and Grapevine Mills Malls, Simon would be forced to retain a forensic expert to assist in the review of 6,000 unlabeled, unsorted tapes. (“Whybrew Aff.” at ¶ 25).

9. The First Amended Complaint is void of any allegations showing the necessity or relevance of all this information. As a result, counsel for Simon contacted counsel for the Plaintiffs to attempt to ascertain the need for this information and whether it was possible to limit the Subpoenas. Plaintiffs’ counsel indicated she needed to establish the dates the Defendant was operating in these six malls. Simon’s counsel asked if it was possible to narrow the scope by

providing the leases related to the Defendant showing when it was operating, but Plaintiffs' counsel indicated "they needed everything."

10. In an effort to reduce the burden on Simon, Simon also made inquiry to the Defendant's counsel to determine if Plaintiffs attempted to obtain the documents from Defendant. Defendant's counsel provided Simon copies of two Requests for Production that Plaintiffs served on Defendant (collectively "the Requests"). See the Requests, attached hereto as Composite **Exhibit C**.⁵ Notwithstanding the questionable need for most, if not all, of this information, a review the Requests shows that Plaintiff made *no attempt* to obtain any of this information from the Defendant before subpoenaing Simon. For example, there are no requests for Defendant's leases at any of these malls, which Defendant would presumably possess. Likewise, there are no requests seeking communications between any of the multiple individuals and entities and Simon. [*See generally*, Ex. C]. Instead, Plaintiffs issued their requests to Simon first, and thus forced it to either incur the undue burden of seeking protection from this Court by virtue of this Motion or to incur the undue burden of engaging in a massive search for documents responsive to Plaintiffs' incredibly broad requests.

11. Irrespective of all of the foregoing, Simon, a non-party to this action, is headquartered in Indianapolis, Indiana and incorporated in Delaware ("Whybrew Aff." at ¶ 4). While Simon is authorized to transact business in the State of Florida, it does not maintain any office in Florida and does not have any employees in Florida. ("Whybrew Aff." at ¶ 5). As a result, any "documents," emails, correspondence, leases, books, records or other financial or corporate information that pertains to the malls in the Subpoenas are not located in Florida. To the extent Simon possesses such records they are located at Simon's principal place of business

⁵ Since discovery is not filed with the Court, Simon is relying on the Requests provided by Defendant's counsel.

in Indianapolis, Indiana, or the various states where the malls are located – Texas, Illinois or Colorado. (“Whybrew Aff.” at ¶ 6).⁶

12. Additionally, the Subpoenas seek information that is not proportional to the needs of the case and impose a burden and/or expense that outweighs its likely benefit. Plaintiffs’ case appears to be focused on whether, and to what extent, Defendant or Plaintiffs may use certain trademarks. The scope of the Subpoenas, which encompass Defendant and six additional individuals and entities on the one hand, Simon and anyone tangentially related to Simon on the other hand, cover documents created over a twenty-one year period, and concern categories of documents that would not even reflect whether the trademarks at issue were used, is excessive by all measures. To the extent Plaintiffs’ goal is to determine the dates that Defendant operated its business at any of the Malls, Plaintiffs could have significantly narrowed the scope of the Subpoenas and sought the specific leases for the Defendant only, without requesting emails and every other “document” related to Defendant and six other individuals and entities over a twenty-one year period. Nonetheless, if the Court denies the Motion to Quash or modifies the Subpoenas, Plaintiff should be required to pay the reasonable costs of producing the information requested.

13. Simon is entitled to recover its reasonable attorneys’ fees as set forth in Federal Rule of Civil Procedure 45(d)(1).

14. As more fully set forth below in the accompanying memorandum of law, the Subpoenas impose an undue burden and expense on Simon and require Simon to disclose

⁶ Notwithstanding the other grounds for quashing the Subpoenas set forth herein, Simon may not even “transact business in person” within 100 miles of Orlando – the place where production is designated in the Subpoenas. See Fed. R. Civ. P. 45(c)(2)(A). Again, Simon does not maintain any offices in Florida or have any employees in Florida. If it is determined that Simon does not “transact business in person” in Orlando then the Subpoenas “must” be quashed, Fed. R. Civ. P. 45(d)(3)(A)(ii). Regardless, requiring Simon to gather documents located in various locales in Indiana, Texas, Colorado and Illinois and then produce them in Orlando imposes an undue burden on Simon.

confidential commercial information. For these reasons, Simon respectfully requests that the Court quash the Subpoenas. Alternatively, Simon moves the Court to limit discovery, for an enlargement of time to serve its objections to any modified subpoenas, and to require Plaintiffs to pay the reasonable costs of researching and producing the information. Simon further requests fees for the undue burden imposed by the Subpoenas.

MEMORANDUM

I. ARGUMENT.

Federal Rule of Civil Procedure 45 requires that a party who serves a subpoena “must take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). “On timely motion, the court . . . must quash or modify a subpoena that . . . subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A) (emphasis added). The issuing court may also quash a subpoena that requires the respondent to disclose “confidential research, development, or commercial information.” Fed. R. Civ. P. 45(d)(3)(B)(i). The Subpoenas should be quashed on each of these grounds.

A. The Subpoenas Impose an Undue Burden on Simon

In determining whether subpoenas are unduly burdensome, courts weigh the “relevance, the need of the party for the documents, the breadth of the document request, and the time period covered by the request against the burden imposed on the person ordered to produce the desired information.” *McKinnon v. Dollar Thrifty Auto. Grp., Inc.*, No. 2:14-MC-24-FTM-38DNF, 2015 WL 3484695, at *2 (M.D. Fla. June 2, 2015) (citation and quotation omitted). “Courts must also consider the status of a witness as a non-party when determining the degree of burden; the status of the person as a non-party is a factor often weighing against disclosure.” *Schaaf v. SmithKline Beecham Corp.*, No. 3:06CV120 J25TEM, 2006 WL 2246146, at *2 (M.D. Fla. Aug. 4, 2006).

A party's failure to first seek the subpoenaed documents from a party to the case also weighs against requiring production from the non-party. *See* Fed. R. Civ. P. 26(b)(2)(C)(ii); *Enviropak Corp. v. Zenfinity Capital, LLC*, No. 4:14CV00754 ERW, 2014 WL 4715384, at *4 (E.D. Mo. Sept. 22, 2014) (quashing subpoena because party failed to attempt to obtain documents from party before seeking same from non-party); *Maxwell v. Health Ctr. of Lake City, Inc.*, No. 3:05CV1056-J-32MCR, 2006 WL 1627020, at *2 (M.D. Fla. June 6, 2006) ([S]ince this matter concerns non-parties, the Court should also consider . . . whether Defendant can obtain the information it requests from another source.”). Each of these factors weighs in favor of quashing the Subpoenas.

The scope of the Subpoenas, in terms of the specific document requests and the time period covered, is enormous. Plaintiffs are seeking documents, in some cases, that were created over a twenty-one year period. Worse yet, the Subpoenas encompass not only Simon, but every single person or entity “associated” or “related” with Simon or the “Defendants” during the twenty-one year period, including the Defendant and six other individuals and entities and six different malls, including emails, leases and various other documents. Simon does not even know the identities of many of the individuals and entities for which it would be using to guide its search, as the Subpoenas simply state that “Defendants” include “past and present” companies, agents, employees and others acting on Defendants’ behalves. (“Whybrew Aff.” at ¶ 3). The expansive nature of the Subpoenas, moreover, could potentially require Simon to review documents concerning *thousands* of tenants. (“Whybrew Aff.” at ¶ 8). The breadth of the document requests and twenty-one year time period they encompass show the Subpoenas are unduly burdensome.

The burden which would be imposed on Simon if required to respond to the Subpoenas is substantial. (“Whybrew Aff.” at ¶ 26). Responding to the Subpoenas would require Simon to search multiple current and historical electronic databases, as well as voluminous hard copy files located in Indiana, Texas, Colorado and Illinois, which relate not only to the six malls referenced in the Subpoenas, but to any employee, any agent, any affiliate or related entity over a twenty-one year period. (“Whybrew Aff.” at ¶¶ 6, 12-25). Before production Simon would have to review thousands of leases and redact confidential commercial and other information, including for rental rates and various other terms. (“Whybrew Aff.” at ¶ 10). With respect to some of the leases, Simon would also be required to advise the respective tenants prior to producing the lease. (“Whybrew Aff.” at ¶ 11). For electronically stored information, in order to comply with the Subpoenas, Simon would need work with department heads and personnel in Human Resources to develop a list of numerous email accounts and then extract emails from various locations. (“Whybrew Aff.” at ¶¶ 22-23). To complete the process of retrieving responsive electronically stored information, Simon would then be required to hire a third-party vendor and forensic expert for assistance. (“Whybrew Aff.” at ¶¶ 24-25). At minimum, Simon estimates it would take hundreds, and perhaps thousands of hours of administrative time and hundreds of thousands of dollars in vendor costs and expenses to identify and cull the applicable databases, relevant email accounts, electronically stored documents, and paper documents. (“Whybrew Aff.” at ¶ 26). Simon’s estimate does not even include the costs of actually performing the search, having the documents reviewed for responsiveness and for privileged and confidential information by its legal counsel, and having the privileged information described appropriately on a privilege log. (“Whybrew Aff.” at ¶ 26). The substantial burden that would be imposed on Simon if required to respond to the Subpoenas shows the Subpoenas are unduly burdensome.

The Subpoenas are also unduly burdensome on Simon because they seek information that is not relevant to case. A party seeking documents from a non-party carries the “burden . . . to prove its requests are relevant.” *Fadalla v. Life Auto. Products, Inc.*, 258 F.R.D. 501, 504 (M.D. Fla. 2007), *on reconsideration in part*, No. 3:07-MC-42-J-32MCR, 2008 WL 68594 (M.D. Fla. Jan. 4, 2008). Plaintiffs cannot carry their burden. Plaintiffs’ case revolves around the validity of certain trademarks, when Defendant first began using the trademarks, whether Defendant obtained registration of same through false pretenses, and whether Defendant’s subsequent use of the trademarks was continuous in nature. [See generally Am. Cmplt., Doc. 16.] Yet the Subpoenas are not tailored to obtain documents concerning Defendant’s use of the trademarks at all. In fact, the Subpoenas do not specifically seek any documents concerning whether Defendant sold merchandise bearing the trademarks or otherwise made commercial use of the trademarks. Instead, Plaintiffs are burdening Simon with requests to produce every document tangentially related to the Defendant and created over a span of more than two decades. For instance, although Plaintiffs allege Defendant’s first use of the trademarks was in 1997, the Subpoenas seek documents from as early as 1995 and as late as nineteen years later. [See Am. Cmplt. at ¶¶15, 22.] Plaintiffs’ requests for leases and documents revealing the identity of every tenant at various malls, likewise, appear to have no relevance whatsoever to Defendant’s or Plaintiffs’ use of the trademarks. It defies comprehension that Plaintiffs would need to know for purposes of their trademark dispute whether, for example, Starbucks had been a tenant at any of the various malls and, if so, the lease terms and related information. And Plaintiffs’ requests for every document “relating or pertaining” to the Defendant and six other individuals or entities, or for every document reflecting communications between those individuals or entities and Simon, or anyone it is associated with over a twenty-one year span, drastically exceed the scope of

documents which could conceivably be relevant to whether Defendant used a particular trademark. The Subpoenas are not tailored to uncover relevant documents and, moreover, generally seek documents which would not even help support Plaintiffs' case. Instead, the Subpoenas encompass numerous categories of irrelevant information, such as documents reflecting maintenance requests, changes in mall hours for holiday shopping or security information. Because the Subpoenas seek irrelevant documents, a finding that the Subpoenas are unduly burdensome on Simon is appropriate.

Plaintiffs' failure to seek the documents requested in the Subpoenas from others also reflects their unduly burdensome nature. "[T]he court must limit the . . . extent of discovery . . . if it determines that . . . the discovery sought . . . can be obtained from some other source that is more convenient, less burdensome, or less expensive." *See* Fed. R. Civ. P. 26(b)(2)(C)(ii) (emphasis added). Thus, a party's failure to first seek subpoenaed documents from a party to the case weighs against requiring production from a non-party. *Enviropak Corp.*, 2014 WL 4715384 at *4 (quashing subpoena because party failed to attempt to obtain documents from party before seeking same from non-party); *Maxwell*, 2006 WL 1627020 at *2 ("[S]ince this matter concerns non-parties, the Court should also consider . . . whether Defendant can obtain the information it requests from another source."). Plaintiffs neglected to seek the documents requested in the Subpoenas from Defendant before issuing the Subpoenas. *See Exhibit C*. Simon, as a non-party, should not be forced to incur the time and expense of searching through thousands of documents created over a twenty-one year time span when Plaintiffs have not even sought the requisite documents from an entity with an interest in the case, such as Defendant.

B. The Subpoenas Require Simon to Disclose Confidential Commercial Information

The Subpoenas improperly attempt to require Simon to produce confidential commercially sensitive information. A subpoena that requires the disclosure of rent rates, percentage rent and related lease terms impermissibly seeks confidential commercial information. *See* Fed. R. Civ. P. 45(d)(3)(B)(i); *Narcoossee Acquisitions, LLC v. Kohl's Dep't Stores, Inc.*, No. 6:14-CV-203-ORL-41TB, 2014 WL 4279073, at *3 (M.D. Fla. Aug. 28, 2014). In *Narcoossee Acquisitions*, a case between a tenant and landlord, the tenant issued a subpoena to a non-party seeking its communications with the landlord, lease agreements with the landlord and communications between the non-party and any other tenant in the shopping center regarding certain issues. *Id.* at *1. The non-party argued that compliance with the subpoenas would require it to disclose confidential commercial information such as the “rent it is willing to pay, the terms under which it is willing to be a tenant, and other deal terms.” *Id.* at *3. “This information would reveal how [the tenant] structures its store leases and [the tenant] would be harmed competitively if this information were disclosed to its competitors and other potential landlords.” *Id.* This Court agreed with the non-party and quashed the subpoena.

Like the subpoena in *Narcoossee Acquisitions*, the Subpoenas in the instant case attempt to require Simon to disclose documents containing confidential commercial information, such as leases containing rental rates, percentage rent and tenant improvement allowances from other tenants. (“Whybrew Aff.” at ¶ 10). Each tenant at all six malls negotiates rent, percentage rent and tenant improvement allowances different from other tenants. (“Whybrew Aff.” at ¶ 10). As a result, it would be harmful to Simon’s business to permit the production of this information as it would reveal to others, including Simon’s competitors and potential tenants, how the various leases are structured and thereby put Simon at a competitive disadvantage. (“Whybrew Aff.” at

¶ 10); *Narcoossee Acquisitions, LLC*, 2014 WL 4279073 at *3. Alternatively, if the leases are required to be produced, Simon would be obligated to incur the burden of reviewing and redacting every lease encompassed by the Subpoenas. Because the Subpoenas impermissibly seek confidential commercial information they should be quashed.

II. CONCLUSION

Pursuant to Rule 45, the Subpoenas should be quashed because compliance would impose an undue burden on Simon and force it to disclose confidential commercial information. Simon is therefore entitled to recover its reasonable attorneys' fees as set forth in Rule 45(d)(1). *See McMullen v. GEICO Indem. Co.*, No. 14-CV-62467, 2015 WL 2226537, at *8 (S.D. Fla. May 13, 2015) (holding where discovering party imposes undue burden court "must impose an appropriate sanction" which may include "a reasonable fee to cover the movants' expenses in connection with their motions"); *United Techs. Corp. v. Mazer*, No. 05-80980-CIV, 2007 WL 788877, at *5 (S.D. Fla. Mar. 14, 2007) ("As the subpoena imposes an undue burden, [the respondent] shall be entitled to receive its reasonable attorneys' fees in incurred in responding to the subpoena . . .").

In the event the Court does not quash the Subpocnas in their entirety, the Subpoenas should be modified and substantially narrowed in scope, and Simon should be reasonably compensated for the costs of complying with same. *See Cantaline v. Raymark Indus., Inc.*, 103 F.R.D. 447, 450 (S.D. Fla. 1984) ("[T]he court should require the discovering party to advance costs to the non-party [for complying with a subpoena] unless the discovering party can demonstrate that the sum sought by the non-party is unreasonable.").

WHEREFORE, respondent and non-party, SIMON PROPERTY GROUP, INC., respectfully requests that the Court (1) grant this Motion and (2) (a) quash the Subpoenas in their

entirety or (b) modify the Subpoenas and permit Simon additional time to respond to the modified Subpoenas commensurate with the extensive search and review process Simon would be obligated to perform and require Plaintiffs to advance the costs to Simon of complying with the modified Subpoenas; (3) find that Simon is entitled to recover its reasonable attorneys' fees as set forth in Rule 45(d)(1); and (4) provide such other relief to Simon the Court deems just and proper.

CERTIFICATE OF GOOD FAITH CONFERENCE

On May 26, 2016, Brian C. Blair, Esq., as counsel for Simon, conferred with Ms. Riola, Esq., as counsel for Plaintiffs, via telephone in a good faith effort to resolve the issues raised in this Motion. Counsel for the Plaintiffs did not agree to limit the Motion as requested.

Dated: June 21, 2016.

Respectfully submitted:

/s/ Brian C. Blair, Esq. _____

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Simon Property Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

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/s/ Brian C. Blair, Esq.
Brian C. Blair, Esq.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the Middle District of Florida

Spiral Direct, Inc. and Spiral Direct, Ltd.
Plaintiff
v.
Basic Sports Apparel, Inc.,
Defendant
Civil Action No. 6:15-cv-00641-JA-TBS
Middle District of Florida
Orlando Division

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Simon Property Group, Inc., c/o CT Corporation System, 150 West Market Street, Indianapolis, Indiana 46204
(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:
Please see Exhibit A attached hereto.

Place: Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801
Date and Time: 05/31/2016 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/05/2016

CLERK OF COURT

OR

Handwritten signature of the attorney.

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Spiral Direct, Inc. and Spiral Direct, Ltd., who issues or requests this subpoena, are: David E. Cannella, Esquire, Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801 (407) 849-0300

Notice to the person who issues or requests this subpoena
If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed, Fed. R. Civ. P. 45(a)(4).



Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Civil Action No.: 6:15-cv-00641-JA-TBS

EXHIBIT "A"

DEFINITIONS

Except as defined below, all words used in these requests for production shall be construed according to their ordinary accepted meanings, unless some other meaning is clear from the context.

1. "You" and "Your" shall mean and include Simon Property Group, Inc. and each of its subsidiaries, parent, sister companies or organizations, officers, directors, members, managers, employees, accountants, agents, attorneys, representatives, investigators, consultants, partners or other persons or entities acting or purporting to act for them or on their behalf, and any corporation, partnership, proprietorship or entity of any type in which they have an interest or that is in any way affiliated or associated with them, and any parent, subsidiary, affiliate, licensee, franchisee, sister corporation or predecessor of same.

2. "Defendants" shall mean and include Basic Sports Apparel, Inc., Topographic Sports, Inc., Chowaike Holdings, LLC, David Chowaike; Hitei Chowaike and/or Nadia Chowaike, and each and all of Defendants' past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for Defendants or on Defendants' behalf, including, but not limited to, any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or one of Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants.

3. Property shall mean the shopping center/mall known as The Galleria in Houston, Texas, managed and/or owned by Simon Property Group, Inc.

4. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, or handwritten notes, written forms of any kind, charts, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, facsimiles, email messages, text messages, spreadsheets, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or

copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, website screen shots, databases, electronic code, e-mails and all other records kept by electronic means, photographic or mechanical means, and other things similar to any of the foregoing.

5. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. the title or other means of identification of the document;
- b. the date of the document;
- c. the author of the document;
- d. the recipient or recipients of the document;
- e. the subject matter of the document;
- f. the present location of any and all copies of the document;

and

- g. the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

6. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

7. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

8. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, facsimiles, email, or other data transmissions of any type or nature, whether oral, electronic, or written.

9. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

10. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

11. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

13. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses which might otherwise be construed to be outside the scope.

TIME FRAME

Unless otherwise indicated, these requests for production cover the time period from January 1, 1995 up to and including the date of your response hereto.

DOCUMENTS TO BE PRODUCED

1. All documents in your possession or control relating or pertaining to Basic Sports Apparel, Inc., Spira Sportswear, LLC; Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki Defendants.
2. Copies of any and all documents relating to emails, correspondence or other communications between you and:
 - a. Basic Sports Apparel, Inc.,
 - b. Spira Sportswear, LLC

c. Topographic Sports, Inc.,

d. Chowaiki Holdings, LLC,

e. David Chowaiki,

f. Hilel Chowaiki and/or

g. Nadia Chowaiki

concerning the property known as The Galleria.

3. All leases, contracts and related documents between you and Basic Sports Apparel, Inc., Spira Sportswear, LLC, Topographic Sports, Inc., Chowaiki Holding, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki for space at The Galleria.

4. All documents identifying the tenants of the mall known as The Galleria for the calendar year 2002.

5. All documents identifying the tenants of the mall known as The Galleria for the calendar year 2003.

6. All documents identifying the tenants of the mall known as The Galleria for the calendar year 2004.

7. All documents identifying the tenants of the mall known as The Galleria for the calendar year 2005.

8. All documents identifying the tenants of the mall known as The Galleria for the calendar year 2006.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Florida

Spiral Direct, Inc. and Spiral Direct, Ltd.)	
<i>Plaintiff</i>)	
v.	)	Civil Action No. 6:15-cv-00641-JA-TBS
Basic Sports Apparel, Inc.,	)	Middle District of Florida
<i>Defendant</i>	)	Orlando Division

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Simon Property Group, Inc., c/o CT Corporation System, 150 West Market Street, Indianapolis, Indiana 46204

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Exhibit A attached hereto.

Place: Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801	Date and Time: 05/31/2016 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached -- Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/05/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Spiral Direct, Inc. and Spiral Direct, Ltd., who issues or requests this subpoena, are: David E. Cannella, Esquire, Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801 (407) 849-0300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(e);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Civil Action No.: 6:15-cv-00641-JA-TBS

EXHIBIT "A"

DEFINITIONS

Except as defined below, all words used in these requests for production shall be construed according to their ordinary accepted meanings, unless some other meaning is clear from the context.

1. "You" and "Your" shall mean and include Simon Property Group, Inc. and each of its subsidiaries, parent, sister companies or organizations, officers, directors, members, managers, employees, accountants, agents, attorneys, representatives, investigators, consultants, partners or other persons or entities acting or purporting to act for them or on their behalf, and any corporation, partnership, proprietorship or entity of any type in which they have an interest or that is in any way affiliated or associated with them, and any parent, subsidiary, affiliate, licensee, franchisee, sister corporation or predecessor of same.

2. "Defendants" shall mean and include Basic Sports Apparel, Inc., Topographic Sports, Inc., Chowaike Holdings, LLC, David Chowaike; Hilel Chowaike and/or Nadia Chowaike, and each and all of Defendants' past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for Defendants or on Defendants' behalf, including, but not limited to, any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or one of Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants.

3. Property shall mean the shopping center/mall known as Cielo Vista in El Paso, Texas, managed and/or owned by Simon Property Group, Inc.

4. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, or handwritten notes, written forms of any kind, charts, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, facsimiles, email messages, text messages, spreadsheets, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or

copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, website screen shots, databases, electronic code, e-mails and all other records kept by electronic means, photographic or mechanical means, and other things similar to any of the foregoing.

5. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. the title or other means of identification of the document;
- b. the date of the document;
- c. the author of the document;
- d. the recipient or recipients of the document;
- e. the subject matter of the document;
- f. the present location of any and all copies of the document;

and

- g. the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

6. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

7. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

8. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, facsimiles, email, or other data transmissions of any type or nature, whether oral, electronic, or written.

9. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

10. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

11. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

13. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses which might otherwise be construed to be outside the scope.

TIME FRAME

Unless otherwise indicated, these requests for production cover the time period from January 1, 1995 up to and including the date of your response hereto.

DOCUMENTS TO BE PRODUCED

1. All documents in your possession or control relating or pertaining to Basic Sports Apparel, Inc., Spira Sportswear, LLC; Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki Defendants.
2. Copies of any and all documents relating to emails, correspondence or other communications between you and:
 - a. Basic Sports Apparel, Inc.,
 - b. Spria Sportswear, LLC

c. Topographic Sports, Inc.,

d. Chowaiki Holdings, LLC,

e. David Chowaiki,

f. Hilel Chowaiki and/or

g. Nadia Chowaiki

concerning the property known as Cielo Vista.

3. All leases, contracts and related documents between you and Basic Sports Apparel, Inc., Spira Sportswear, LLC, Topographic Sports, Inc., Chowaiki Holding, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki for space at Cielo Vista.

4. All documents identifying the tenants of the mall known as Cielo Vista for the calendar year 1997.

5. All documents identifying the tenants of the mall known as Cielo Vista for the calendar year 1998.

6. All documents identifying the tenants of the mall known as Cielo Vista for the calendar year 1999.

7. All documents identifying the tenants of the mall known as Cielo Vista for the calendar year 2000.

8. All documents identifying the tenants of the mall known as Cielo Vista for the calendar year 2001.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
Middle District of Florida

Spiral Direct, Inc. and Spiral Direct, Ltd.)	
<i>Plaintiff</i>)	
v.	)	Civil Action No. 6:15-cv-00641-JA-TBS
Basic Sports Apparel, Inc.,	)	Middle District of Florida
<i>Defendant</i>	)	Orlando Division

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Simon Property Group, Inc., c/o CT Corporation System, 150 West Market Street, Indianapolis, Indiana 46204

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Exhibit A attached hereto.

Place: Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801	Date and Time: 05/31/2016 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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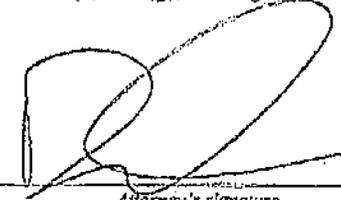
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/05/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Spiral Direct, Inc. and Spiral Direct, Ltd., who issues or requests this subpoena, are:
David E. Cannella, Esquire, Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801 (407) 849-0300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer, or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Civil Action No.: 6:15-cv-00641-JA-TBS

EXHIBIT "A"

DEFINITIONS

Except as defined below, all words used in these requests for production shall be construed according to their ordinary accepted meanings, unless some other meaning is clear from the context.

1. "You" and "Your" shall mean and include Simon Property Group, Inc. and each of its subsidiaries, parent, sister companies or organizations, officers, directors, members, managers, employees, accountants, agents, attorneys, representatives, investigators, consultants, partners or other persons or entities acting or purporting to act for them or on their behalf, and any corporation, partnership, proprietorship or entity of any type in which they have an interest or that is in any way affiliated or associated with them, and any parent, subsidiary, affiliate, licensee, franchisee, sister corporation or predecessor of same.

2. "Defendants" shall mean and include Basic Sports Apparel, Inc., Topographic Sports, Inc., Chowaike Holdings, LLC, David Chowaike, Hilel Chowaike and/or Nadia Chowaike, and each and all of Defendants' past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for Defendants or on Defendants' behalf, including, but not limited to, any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or one of Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants.

3. Property shall mean the shopping center/mall known as Woodfield Mall in Schaumburg, Illinois, managed and/or owned by Simon Property Group, Inc.

4. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, or handwritten notes, written forms of any kind, charts, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, facsimiles, email messages, text messages, spreadsheets, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or

copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, website screen shots, databases, electronic code, e-mails and all other records kept by electronic means, photographic or mechanical means, and other things similar to any of the foregoing.

5. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. the title or other means of identification of the document;
- b. the date of the document;
- c. the author of the document;
- d. the recipient or recipients of the document;
- e. the subject matter of the document;
- f. the present location of any and all copies of the document;

and

- g. the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

6. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

7. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

8. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, facsimiles, email, or other data transmissions of any type or nature, whether oral, electronic, or written.

9. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

10. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

11. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

13. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses which might otherwise be construed to be outside the scope.

TIME FRAME

Unless otherwise indicated, these requests for production cover the time period from January 1, 1995 up to and including the date of your response hereto.

DOCUMENTS TO BE PRODUCED

1. All documents in your possession or control relating or pertaining to Basic Sports Apparel, Inc., Spira Sportswear, LLC; Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki Defendants.
2. Copies of any and all documents relating to emails, correspondence or other communications between you and:
 - a. Basic Sports Apparel, Inc.,
 - b. Spria Sportswear, LLC

c. Topographic Sports, Inc.,

d. Chowaiki Holdings, LLC,

e. David Chowaiki,

f. Hilel Chowaiki and/or

g. Nadia Chowaiki

concerning the property known as Woodfield Mall.

3. All leases, contracts and related documents between you and Basic Sports Apparel, Inc., Spira Sportswear, LLC, Topographic Sports, Inc., Chowaiki Holding, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki for space at Woodfield Mall.

4. All documents identifying the tenants of the mall known as Woodfield Mall for the calendar year 1997.

5. All documents identifying the tenants of the mall known as Woodfield Mall for the calendar year 1998.

6. All documents identifying the tenants of the mall known as Woodfield Mall for the calendar year 1999.

7. All documents identifying the tenants of the mall known as Woodfield Mall for the calendar year 2000.

8. All documents identifying the tenants of the mall known as Woodfield Mall for the calendar year 2001.

9. All documents identifying the tenants of the mall known as Woodfield Mall for the calendar year 2002.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
Middle District of Florida

Spiral Direct, Inc. and Spiral Direct, Ltd.)	
<i>Plaintiff</i>)	
v.	)	Civil Action No. 6:15-cv-00641-JA-TBS
Basic Sports Apparel, Inc.,	)	Middle District of Florida
<i>Defendant</i>	)	Orlando Division

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Simon Property Group, Inc., c/o CT Corporation System, 150 West Market Street, Indianapolis, Indiana 46204

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Exhibit A attached hereto.

Place: Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801	Date and Time: 05/31/2016 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

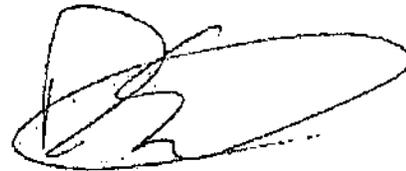
Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/05/2016

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Spiral Direct, Inc. and Spiral Direct, Ltd., who issues or requests this subpoena, are: David E. Cannella, Esquire, Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801 (407) 849-0300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

Civil Action No.: 6:15-cv-00641-JA-TBS

EXHIBIT "A"

DEFINITIONS

Except as defined below, all words used in these requests for production shall be construed according to their ordinary accepted meanings, unless some other meaning is clear from the context.

1. "You" and "Your" shall mean and include Simon Property Group, Inc. and each of its subsidiaries, parent, sister companies or organizations, officers, directors, members, managers, employees, accountants, agents, attorneys, representatives, investigators, consultants, partners or other persons or entities acting or purporting to act for them or on their behalf, and any corporation, partnership, proprietorship or entity of any type in which they have an interest or that is in any way affiliated or associated with them, and any parent, subsidiary, affiliate, licensee, franchisee, sister corporation or predecessor of same.

2. "Defendants" shall mean and include Basic Sports Apparel, Inc., Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki, and each and all of Defendants' past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for Defendants or on Defendants' behalf, including, but not limited to, any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or one of Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants.

3. Property shall mean the shopping center/mall known as Grapevine Mills in Grapevine, Texas, managed and/or owned by Simon Property Group, Inc.

4. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, or handwritten notes, written forms of any kind, charts, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, facsimiles, email messages, text messages, spreadsheets, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or

copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, website screen shots, databases, electronic code, e-mails and all other records kept by electronic means, photographic or mechanical means, and other things similar to any of the foregoing.

5. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. the title or other means of identification of the document;
- b. the date of the document;
- c. the author of the document;
- d. the recipient or recipients of the document;
- e. the subject matter of the document;
- f. the present location of any and all copies of the document;

and

- g. the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

6. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

7. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

8. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, facsimiles, email, or other data transmissions of any type or nature, whether oral, electronic, or written.

9. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

10. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

11. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

13. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses which might otherwise be construed to be outside the scope.

TIME FRAME

Unless otherwise indicated, these requests for production cover the time period from January 1, 1995 up to and including the date of your response hereto.

DOCUMENTS TO BE PRODUCED

1. All documents in your possession or control relating or pertaining to Basic Sports Apparel, Inc., Spira Sportswear, LLC; Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki Defendants.
2. Copies of any and all documents relating to emails, correspondence or other communications between you and:
 - a. Basic Sports Apparel, Inc.,
 - b. Spira Sportswear, LLC

c. Topographic Sports, Inc.,

d. Chowaiki Holdings, LLC,

e. David Chowaiki,

f. Hilel Chowaiki and/or

g. Nadia Chowaiki

concerning the property known as Grapevine Mills.

3. All leases, contracts and related documents between you and Basic Sports Apparel, Inc., Spira Sportswear, LLC, Topographic Sports, Inc., Chowaiki Holding, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki for space at Grapevine Mills.

4. All documents identifying the tenants of the mall known as Grapevine Mills for the calendar year 2002.

5. All documents identifying the tenants of the mall known as Grapevine Mills for the calendar year 2003.

6. All documents identifying the tenants of the mall known as Grapevine Mills for the calendar year 2004.

7. All documents identifying the tenants of the mall known as Grapevine Mills for the calendar year 2005.

8. All documents identifying the tenants of the mall known as Grapevine Mills for the calendar year 2006.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Florida

Spiral Direct, Inc. and Spiral Direct, Ltd.)	
<i>Plaintiff</i>)	
v.	)	Civil Action No. 6:15-cv-00641-JA-TBS
Basic Sports Apparel, Inc.,	)	Middle District of Florida
<i>Defendant</i>	)	Orlando Division

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Simon Property Group, Inc., c/o CT Corporation System, 150 West Market Street, Indianapolis, Indiana 46204

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Exhibit A attached hereto.

Place: Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801	Date and Time: 05/31/2016 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
---------------	-----------------------

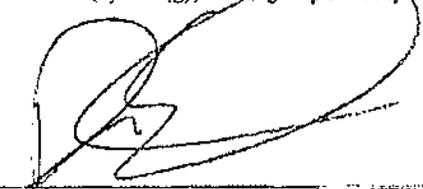
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/05/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Spiral Direct, Inc. and Spiral Direct, Ltd., who issues or requests this subpoena, are: David E. Cannella, Esquire, Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801 (407) 849-0300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Civil Action No.: 6:15-cv-00641-JA-TBS

EXHIBIT "A"

DEFINITIONS

Except as defined below, all words used in these requests for production shall be construed according to their ordinary accepted meanings, unless some other meaning is clear from the context.

1. "You" and "Your" shall mean and include Simon Property Group, Inc. and each of its subsidiaries, parent, sister companies or organizations, officers, directors, members, managers, employees, accountants, agents, attorneys, representatives, investigators, consultants, partners or other persons or entities acting or purporting to act for them or on their behalf, and any corporation, partnership, proprietorship or entity of any type in which they have an interest or that is in any way affiliated or associated with them, and any parent, subsidiary, affiliate, licensee, franchisee, sister corporation or predecessor of same.

2. "Defendants" shall mean and include Basic Sports Apparel, Inc., Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki, and each and all of Defendants' past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for Defendants or on Defendants' behalf, including, but not limited to, any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or one of Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants.

3. Property shall mean the shopping center/mall known as Sunland Park Mall in El Paso, Texas, managed and/or owned by Simon Property Group, Inc.

4. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, or handwritten notes, written forms of any kind, charts, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, facsimiles, email messages, text messages, spreadsheets, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or

copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, website screen shots, databases, electronic code, e-mails and all other records kept by electronic means, photographic or mechanical means, and other things similar to any of the foregoing.

5. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. the title or other means of identification of the document;
- b. the date of the document;
- c. the author of the document;
- d. the recipient or recipients of the document;
- e. the subject matter of the document;
- f. the present location of any and all copies of the document;

and

- g. the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

6. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

7. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

8. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, facsimiles, email, or other data transmissions of any type or nature, whether oral, electronic, or written.

9. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

10. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

11. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

13. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses which might otherwise be construed to be outside the scope.

TIME FRAME

Unless otherwise indicated, these requests for production cover the time period from January 1, 1995 up to and including the date of your response hereto.

DOCUMENTS TO BE PRODUCED

1. All documents in your possession or control relating or pertaining to Basic Sports Apparel, Inc., Spira Sportswear, LLC; Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki Defendants.
2. Copies of any and all documents relating to emails, correspondence or other communications between you and:
 - a. Basic Sports Apparel, Inc.,
 - b. Spria Sportswear, LLC

c. Topographic Sports, Inc.,

d. Chowaiki Holdings, LLC,

e. David Chowaiki,

f. Hilel Chowaiki and/or

g. Nadia Chowaiki

concerning the property known as Sunland Park Mall.

3. All leases, contracts and related documents between you and Basic Sports Apparel, Inc., Spira Sportswear, LLC, Topographic Sports, Inc., Chowaiki Holding, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki for space at Sunland Park Mall.

4. All documents identifying the tenants of the mall known as Sunland Park Mall for the calendar year 2002.

5. All documents identifying the tenants of the mall known as Sunland Park Mall for the calendar year 2003.

6. All documents identifying the tenants of the mall known as Sunland Park Mall for the calendar year 2004.

7. All documents identifying the tenants of the mall known as Sunland Park Mall for the calendar year 2005.

8. All documents identifying the tenants of the mall known as Sunland Park Mall for the calendar year 2006.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
Middle District of Florida

Spiral Direct, Inc. and Spiral Direct, Ltd.)	Civil Action No. 6:15-cv-00641-JA-TBS Middle District of Florida Orlando Division
<i>Plaintiff</i>)	
v.)	
Basic Sports Apparel, Inc.,)	
<i>Defendant</i>)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Simon Property Group, Inc., c/o CT Corporation System, 150 West Market Street, Indianapolis, Indiana 46204

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Exhibit A attached hereto.

Place: Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801	Date and Time: 05/31/2016 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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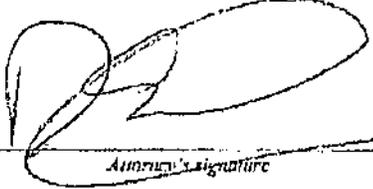
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/05/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Spiral Direct, Inc. and Spiral Direct, Ltd., who issues or requests this subpoena, are: David E. Cannella, Esquire, Carlton Fields Jordan Burt, P.A., 450 South Orange Avenue, Suite 500, Orlando, Florida 32801 (407) 849-0300

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(e);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

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(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Civil Action No.: 6:15-cv-00641-JA-TBS

EXHIBIT "A"

DEFINITIONS

Except as defined below, all words used in these requests for production shall be construed according to their ordinary accepted meanings, unless some other meaning is clear from the context.

1. "You" and "Your" shall mean and include Simon Property Group, Inc. and each of its subsidiaries, parent, sister companies or organizations, officers, directors, members, managers, employees, accountants, agents, attorneys, representatives, investigators, consultants, partners or other persons or entities acting or purporting to act for them or on their behalf, and any corporation, partnership, proprietorship or entity of any type in which they have an interest or that is in any way affiliated or associated with them, and any parent, subsidiary, affiliate, licensee, franchisee, sister corporation or predecessor of same.

2. "Defendants" shall mean and include Basic Sports Apparel, Inc., Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki, and each and all of Defendants' past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for Defendants or on Defendants' behalf, including, but not limited to, any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or one of Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants.

3. Property shall mean the shopping center/mall known as Colorado Mills in Lakewood, Colorado, managed and/or owned by Simon Property Group, Inc.

4. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, or handwritten notes, written forms of any kind, charts, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, facsimiles, email messages, text messages, spreadsheets, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or

copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer print-outs, data processing input/output, website screen shots, databases, electronic code, e-mails and all other records kept by electronic means, photographic or mechanical means, and other things similar to any of the foregoing.

5. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. the title or other means of identification of the document;
- b. the date of the document;
- c. the author of the document;
- d. the recipient or recipients of the document;
- e. the subject matter of the document;
- f. the present location of any and all copies of the document;

and

- g. the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

6. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

7. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

8. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, facsimiles, email, or other data transmissions of any type or nature, whether oral, electronic, or written.

9. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

10. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

11. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

13. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses which might otherwise be construed to be outside the scope.

TIME FRAME

Unless otherwise indicated, these requests for production cover the time period from January 1, 1995 up to and including the date of your response hereto.

DOCUMENTS TO BE PRODUCED

1. All documents in your possession or control relating or pertaining to Basic Sports Apparel, Inc., Spira Sportswear, LLC; Topographic Sports, Inc., Chowaiki Holdings, LLC, David Chowaiki; Hilel Chowaiki and/or Nadia Chowaiki Defendants.
2. Copies of any and all documents relating to emails, correspondence or other communications between you and:
 - a. Basic Sports Apparel, Inc.,
 - b. Spira Sportswear, LLC

c. Topographic Sports, Inc.,

d. Chowaiki Holdings, LLC,

e. David Chowaiki,

f. Hilel Chowaiki and/or

g. Nadia Chowaiki

concerning the property known as Colorado Mills.

3. All leases, contracts and related documents between you and Basic Sports Apparel, Inc., Spira Sportswear, LLC, Topographic Sports, Inc., Chowaiki Holding, LLC, David Chowaiki, Hilel Chowaiki and/or Nadia Chowaiki for space at the Colorado Mills.

4. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2005.

5. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2006.

6. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2007.

7. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2008.

8. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2009.

9. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2010.

10. All documents identifying the tenants of the mall known Colorado Mills for the calendar year 2011.

11. All documents identifying the tenants of the mall known as Colorado Mills or the calendar year 2012.
12. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2013.
13. All documents identifying the tenants of the mall known as Colorado Mills for the calendar year 2014.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SPIRAL DIRECT, INC. and SPIRAL
DIRECT, LTD.,

Plaintiffs,

v.

Case No. 6:15-cv-00641-JA-TBS

BASIC SPORTS APPAREL, INC.

Defendant.

AFFIDAVIT OF MELISSA WHYBREW

STATE OF INDIANA }
 }
COUNTY OF MARION }

BEFORE ME, the undersigned notary public, personally appeared Melissa Whybrew, who, having first been duly sworn upon oath deposes and states as follows:

1. My name is Melissa Whybrew and I am over the age of 18. I am qualified and authorized to make this Affidavit on behalf of Simon Property Group, Inc. ("Simon") in this matter.

2. I am a Senior Litigation Paralegal for Simon and I have personal knowledge of the facts set forth herein or I have derived such knowledge from reviewing the business records of Simon. I am also familiar with Simon's various record keeping and emails systems and have knowledge of the time and labor it takes in reviewing these databases and responding to discovery requests.

3. In preparing this Affidavit I have reviewed the six subpoenas served on Simon in this matter (the "Subpoenas") related to the Grapevine Mills, Colorado Mills, Woodfield, Sunland Park, Cielo Vista and Houston Galleria Malls (collectively "the Malls"). The



Subpoenas seek documents concerning multiple "Defendants" who do not appear to be parties to this action, as well as "past and present" employees, agents, affiliates or companies acting on behalf of "Defendants." Simon's ability to perform a search of documents concerning the additional "Defendants" is made difficult if not impossible, as the additional individuals and entities identified as "Defendants" in the Subpoenas are unknown to Simon. Additionally, the broad nature of the Subpoenas would also require Simon search and review numerous databases and thousands of hard copy files in multiple locations.

4. Simon is a Delaware corporation with its principal place of business in Indianapolis, Indiana.

5. While Simon is authorized to transact business in the State of Florida, it does not maintain an office or have any employees in Florida.

6. Any documents that pertain to the Malls and the individuals or entities listed in the Subpoenas are not located in Florida. As a result, none of the responsive documents are located within 100 miles of Orlando, Florida. To the extent Simon possesses any such documents they would be located in Indiana, Texas, Colorado or Illinois where the home office or Malls are located.

7. In or around May 2014, Washington Prime Group, Inc. acquired Sunland Park Mall from an affiliate of Simon. Washington Prime Group, Inc. has since merged with Glimcher Realty Trust, and the merged company was named WP Glimcher, Inc. Simon does not own Sunland Park Mall, and is no longer in custody or control of certain information pertaining to Sunland Park Mall.

8. The Malls subject to the Subpoenas are all large, enclosed malls located in Texas, Colorado and Illinois. The Malls have a combined gross leasable area of approximately 9,480,000 square feet and approximately 1,400 current, permanent retail tenants, hundreds of

short term tenants, thousands of prior tenants, and two high rise hotels and three office towers, which also contain tenants. The Houston Galleria, for example, contains over two million square feet of retail space and contains over 400 stores, two hotels and three office towers. As a result, responding to the Subpoenas could potentially require Simon to review thousands of lease files for each of the years covered by the Subpoenas, which is twenty-one years. This review would not even include emails, correspondence and other documents as that term is broadly defined in the Subpoenas. Based on the breadth and scope of the definitions and document requests in the Subpoenas, many of the emails and other documents located would result in the production of documents that do not appear relevant or related to the dispute, such as maintenance requests, changes in mall hours for holiday shopping or security information.

9. Additionally, all of these Malls have both short-term and permanent tenants. Short-term tenants are generally tenants that are leasing a cart or kiosk for one year or less. Permanent tenants have leases that are longer in duration and are typically in-line spaces. The process for obtaining information related to each type of lease differs as set forth herein.

10. The Subpoenas request information identifying historical tenants at the Malls. Depending on the date and type of lease, Simon must determine such information by either reviewing the leases in their hard copy form or searching databases for the years in question. Even if these leases are located, they will contain confidential commercial information, which is sensitive and proprietary to Simon. Such information includes, but is not limited to, confidential economic information such as rental rates, percentage rent, ancillary charges, and tenant improvement allowances. Each tenant at all six malls negotiates rent, percentage rent and tenant improvement allowances different from other tenants. As a result, it would be detrimental to Simon's business to permit the production of this information as it would then become available to Simon's competitors and other potential tenants, and put Simon at a competitive disadvantage.

Some leases also contain guarantees which have personal information of the guarantors, such as social security numbers. Prior to production, all of these leases would have to be individually reviewed and this information redacted. Reviewing thousands of leases one by one to determine the identities of tenants at the various Malls over the years described in the Subpoenas, and then redacting the confidential commercial information contained therein, would be burdensome on Simon by requiring an untold number of hours to complete and requiring Simon to incur the costs of dedicating personnel to focus entirely on this review and redaction process rather than Simon's business interests.

11. Some of the leases may also require Simon to advise the respective tenant that the lease is being produced. As a result, each lease would have to be reviewed for that requirement and the applicable tenants would need to be provided written notice before production of the lease.

12. Electronically stored information for permanent tenants is located on a different system than the electronically stored information for short-term tenants. For active permanent tenants, as of 2003, lease information is electronically available in Simon's electronic lease repository. The online lease files only contain lease documents and lease document related correspondence. They do not contain informal correspondence and communications such as emails, lease negotiations, memos or related financial information or documentation. Those documents are located elsewhere as set forth below.

13. The online lease files are organized by mall, and each tenant has its own electronic lease file. Simon's IS department is able to copy lease files for an entire mall, but Simon would still have to review the leases and lease files at issue to determine whether they fall within the time period set forth in the Subpoenas, redact proprietary and confidential commercial information and send notice, if applicable, as stated above.

14. For permanent tenants that were not active at the time of the implementation of the online lease file system, their paper lease files reside in offsite storage in Indianapolis, Indiana. Simon would have to review an inventory in excess of 44,000 boxes, retrieve those boxes containing the necessary lease files and manually pull each lease file for review, copying and redaction.

15. Permanent tenant lease negotiations and approvals are tracked in another system, which was implemented in 1997. Each year has its own archive and a listing of each tenant transaction, by tenant and by mall. The manner in which this database is set up and tracked requires a multiple year search for each tenant. For example, if a lease was executed in 2000, Simon would need to search both the 1999 and 2001 archives as well since the negotiations may have started in 1999 or not concluded (from a milestone standpoint) until 2001.

16. Additionally, custodians in the Leasing and Legal Leasing departments in Indianapolis and on-site personnel at the Malls in Texas, Colorado and Illinois may keep their own paper files with respect to correspondence, notes and other documents that will need to be gathered and reviewed.

17. For short-term tenants, tenant files are located at the Mall offices in the various states. Each of the Malls has discretion whether to utilize off-site storage at the local level. As a result, Simon would have to review on-site files and in some cases retrieve files from off-site storage and review them for responsiveness. Unsigned copies of short-term leases may also have to be obtained through an electronic database, which was implemented in 1999. Each year has its own archive, and Simon would have to manually access each lease, one tenant and one center at a time.

18. Any other documents not considered lease documents, such as memoranda and hand written notes, are maintained by individual custodians at various locations, including at the

Malls or regional offices in various states, on-site in Indianapolis, Indiana, or reside in offsite storage in Indianapolis, Indiana. Each custodian's method of retention would be dependent upon the custodian's business function. In order for Simon to search for hard copies of documents responsive to the Subpoenas, Simon would first have to identify all potential custodians as well as over eighty-nine departments, for a period of over twenty-one years.

19. For information related to permanent tenants, such as lease plans, buildout information and charts, this information would reside with Simon's CAD or Tenant Coordination Departments, as well as the Malls. This information is stored either electronically or in paper form. Online files would have to be searched manually in the CAD department. On-site paper files would have to be located and searched, and Simon would also have to review an inventory of off-site boxes, in excess of 44,000 boxes, and retrieve those boxes containing the requested documents and manually review each box. A search would also have to be done at each Mall's off-site storage facility.

20. The Subpoenas, as drafted, also encompass documents containing financial information that relates to the multiple entities and individuals defined therein. For permanent tenants this type of information would reside electronically or in paper depending on the year. Except for the past several years, all rent checks are located in off-site storage and Simon would have to manually search the off-site boxes for multiple entities and individuals over the course of fifteen years or more. For the past few years, images of those checks are available to Accounts Payable online. Simon would have to pull the images and download or print each rent check. Rent payments, credits, sales information and ancillaries are recorded in a financial system. This system was implemented in 1992. For short-term tenants, most payment information resides in a separate system at the respective Mall. Documents reflecting security deposits and related payment documentation are recorded in yet another separate system, implemented in 1993.

21. All marketing or promotional information would reside with Simon's Marketing Department or specialty leasing department in Indianapolis, Indiana or locally at the Malls in Texas, Colorado or Illinois. Again, both sources would likely have documents and information in local off-site storage.

22. In order for Simon to produce any electronically stored information that is responsive to the Subpoenas, it would again need to identify all potential custodians as well as over eighty-nine departments, for a period of over twenty-one years. For field employees, Simon would need to contact Human Resources to obtain a list of all current and former Executive Vice Presidents, Mall Managers, Assistant Mall Managers, Local Leasing Representatives, Office Administrators and Administrative Assistants, and their employment start date and end date for the Malls. For home office employees, Simon would need to work with the department head of each relevant department to determine the employees with duties and/or responsibilities for the Malls and add them to the custodian list.

23. Once Simon has identified all of the email accounts/custodians, IS would need to identify and locate the email files and back up tapes for the custodians in a number of different locations, which would include the servers in Indianapolis, Indiana and an off-site storage facility in Indianapolis.

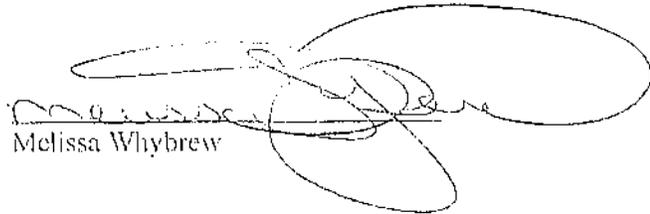
24. Current employees' emails are stored on multiple servers. Locating and extracting emails from a servers or tape cannot be performed with a search mechanism, and is a manual, time intensive process. Simon does not have software in-house that would allow it to review any extracted emails. This process simply cannot be done in-house on the scale that would be required by the Subpoenas. Simon would be required to hire a third-party vendor to extract the email files from the servers and from the back up tapes, and outsource the review to counsel for relevance and privilege.

25. Simon acquired two of the Malls, Colorado Mills and Grapevine Mills, from another party in 2007. All data related to these two malls was transferred to Simon. Colorado Mills and Grapevine Mills employees that were separated or terminated from Mills prior to August 1, 2007 are located on the Mills Microsoft Exchange Server. There are 6,000 tapes total, most of them unlabeled, unsorted, and the integrity of the tapes and data is unknown and questionable. A forensic expert would need to be engaged to analyze and restore the data.

26. Based upon the broad scope of the definitions in the Subpoenas, the number of individuals and entities identified in the Subpoenas, the number of properties involved, the scope of the information sought and the twenty-one year time frame contemplated by the Subpoenas, Simon is unable to provide a firm estimate as to the number of hours and costs of compliance. At a minimum, Simon estimates it would take hundreds, and perhaps thousands of hours of administrative time and hundreds of thousands of dollars in vendor costs and expenses to identify and cull the applicable databases, relevant email accounts, electronically stored documents, and paper documents. This estimate does not include the costs of actually performing the search, redaction of the documents, or any third-party vendor costs to comply with the Subpoenas.

FURTHER AFFIANT SAYETH NOT.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true.

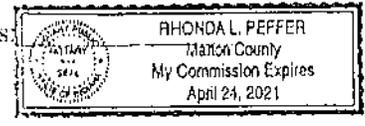

Melissa Whybrew

SWORN TO AND SUBSCRIBED before me this 21 day of June, 2016. by
Melissa Whybrew, who is personally known to me or who has produced
_____ as identification.


NOTARY PUBLIC

Rhonda L. Pepper
Notary Name Printed

My Commission Expires



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

-----/
SPIRAL DIRECT, INC. and
SPIRAL DIRECT, LTD.

Plaintiffs,

v.

Civil Action No.: 6:15-cv-00641-JA-TBS

BASIC SPORTS APPAREL, INC.

Defendant.
-----/

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs Spiral Direct, Inc. and Spiral Direct, Ltd. hereby request that Defendant, Basic Sports Apparel, Inc, provide documents and things responsive to the requests for production set forth below within thirty (30) days of services thereof:

DEFINITIONS

1. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is or has been in your possession, custody, or control or of which you have knowledge, including, but not limited to, correspondence, memoranda, tapes, stenographic, or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, telegraphs, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, teletypes, telexes, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, transparencies, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind,



however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer printouts, data processing input/output, microfilms, e-mails and all other records kept by electronic means, photographs or mechanical means, and other things similar to any of the foregoing.

2. To "identify" a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- (a) the title or other means of identification of the document;
- (b) the date of the document;
- (c) the author of the document;
- (d) the recipient or recipients of the document;
- (e) the subject matter of the document;
- (f) the present location of any and all copies of the document; and
- (g) the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

3. "Person" means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

4. To "identify" a person means to state the person's full name, present or last known address and telephone number, and present or last known business affiliation and title.

5. The phrase "contact or communication" includes all instances in which information has been transmitted from one person or entity to another, including, but not limited to, telephone conversations, meetings, conferences, correspondence, other mailings, telexes, cables, telecopied transmissions, or other data transmissions of any type or nature, whether oral, electronic, or written.

6. To "identify" a contact or communication means to state the date of the contact or communication, the person or persons involved in, participating in, or present at the contact or communication, and the nature or type of the contact or communication.

7. The term "entity" means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

8. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

9. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

10. The term "each" includes the word "every" and "every" includes the word "each." The term "any" includes the word "all" and "all" includes the word "any." The terms "and" as well as "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses that which might otherwise be construed to be outside the scope.

11. "Spiral Direct Action" means the above-titled action.

12. "Basic Sports Apparel," "BSA," "You," or "Your" means the Defendant in the above-titled action.

13. "Spiral Direct UK," "Spiral Direct US," "Spiral Parties," and "Plaintiffs" all refer to Plaintiffs Spiral Direct UK, LTD. and Spiral Direct, Inc., jointly and/or severally.

14. "Application" means U.S. Application Serial No. 75358336 for the trademark SPIRAL in the name of BSA.

15. "Registration" means U.S. Registration No. 2,218,515 for the trademark SPIRAL in the name of BSA.

16. "BSA Goods" means the items listed in the description of the goods in the Application and the Registration, namely "jackets, pullovers, hats, jeans, T-shirts, vests, shorts, underwear, shoes, socks, gloves, headbands and scarves."

CLAIMS OF PRIVILEGE

If you contend that you are entitled on the basis of any claim or privilege to withhold any document, provide the following information with request to such document:

- (a) the subject matter of the document;
- (b) the date of the document;
- (c) the identities of all persons who have ever had possession of the document;
- (d) the basis of or grounds for the claim of privilege;
- (g) the person on whose behalf the claim of privileges is being asserted; and
- (h) the request to which the document is responsive.

DOCUMENT FORMAT

Documents are to be produced electronically in TIFF and/or .pdf format, and sent by email to jriola@cfjblaw.com, cc: dearlucchi@cfjblaw.com. Large documents may be sent as .zip files and/or on CD-ROM or hard copy.

DOCUMENTS TO BE PRODUCED

- 1. All depositions (including copies of videotaped depositions) of Hilel Chaikin and of David Chaikin;
- 2. All Declarations and Affidavits of Hilel Chaikin, David Chaikin, and any officer of BSA, relating or referring to the use of the mark SPIRAL by BSA from 1997 to the date of your response to this request for production;
- 3. All BSA's Responses to Interrogatories and Requests for Admissions propounded by any party against whom BSA brought a claim or counterclaim for infringement of the Registration;
- 4. All documents showing or relating or referring to Your use or non-use of the mark SPIRAL on each item of the BSA Goods for each year from 1997 to the date of Your response to this request for production;

5. All market research reports, expert reports, and other results of any investigations conducted by or on behalf of BSA regarding the use or non-use of the mark SPIRAL by third parties;
6. All settlement agreements between You and any party (i) to whom You sent a cease and desist letter and/or (ii) brought a claim or counterclaim for infringement of the Registration;
7. All documents showing use of the SPIRAL mark on each of the BSA Goods on each of the following dates:
 - i. June 15, 1997
 - ii. September 17, 1997
 - iii. January 19, 1999
 - iv. January 19, 2004
 - v. July 19, 2004
 - vi. January 19, 2005
 - vii. July 19, 2005
 - viii. January 19, 2009
 - ix. July 19, 2009
 - x. January 19, 2012
 - xi. July 19, 2012
 - viii. January 19, 2015
 - ix. July 19, 2015
8. All trademark availability searches conducted by You prior to your adoption and use of the SPIRAL mark on each of the BSA Goods, including but not limited to third party search reports (Corsearch, Thomson & Thomson, etc.), internet searches, USPTO TEAS or Trademark Gazette searches, and the like.
9. All due diligence or "policing" searches conducted by You, subsequent to your adoption and use of the SPIRAL mark on each of the BSA Goods, to determine the use by third parties of SPIRAL or SPIRAL-variant marks for clothing, including but not limited to third party search reports (Corsearch, Thomson & Thomson, etc.), internet searches, USPTO TEAS or Trademark Gazette searches, watch notices, and the like.
10. All documents supporting Your claim in the Haugland Letter (as defined in the Amended Complaint) that Plaintiff Spiral US' use of its Spiral mark "caused material and irreparable harm" to you.
11. All documents supporting Your claim in the Haugland Letter that Plaintiff Spiral US' use of its Spiral mark caused actual confusion with Your SPIRAL mark, including the identity and contact information for all individuals involved in each such instance of actual confusion.

12. All documents supporting Your claim in the Haugland Letter that Plaintiff Spiral US' use of the mark SPIRAL "appears to have been utilized with the intent to cause confusion, mistake, and deception."
13. For each item of the BSA Goods individually, and for each of the past five (5) years, all documents identifying the following:
 - i. channels of trade;
 - ii. method of sale, offer for sale, or distribution;
 - iii. annual net profits;
 - iv. units sold;
 - v. total advertising dollars spent.

Respectfully submitted this 6th day of November, 2015.

By: /s/ Jill Sarnoff Riola
Jill Sarnoff Riola
FL Bar No. 432393
Carlton Fields Jordan Burt
450 S. Orange Ave.
Orlando, FL 32801
T: 407-244-8246
jriola@cfjblaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that on November 6, 2015, she served the foregoing document on counsel for Defendant by email at the following email address:

egegan@BKNmurray.com

/s/ Jill Sarnoff Riola
Jill Sarnoff Riola
Carlton Fields Jordan Burt

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

SPIRAL DIRECT, INC. and
SPIRAL DIRECT, LTD.

Plaintiffs,

Civil Action No.: 6:15-cv-00641-JA-TBS

v.

BASIC SPORTS APPAREL, INC.

Defendant.

PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs Spiral Direct, Inc. and Spiral Direct, Ltd. hereby request that Defendant, Basic Sports Apparel, Inc, provide documents and things responsive to the requests for production set forth below within thirty (30) days of service thereof:

DEFINITIONS

1. "Document" or "documentation" shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is or has been in your possession, custody, or control or of which you have knowledge, including, but not limited to, correspondence, memoranda, tapes, stenographic, or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, telegraphs, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, teletypes, telexes, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedules, transparencies, recordings, catalogs, advertisements, promotional materials, films, video tapes,

audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and also including, but not limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents or are otherwise not identical to the original documents, as well as any affidavits, statements, summaries, opinions, reports, studies, analyses, computer printouts, data processing input/output, microfilms, e-mails and all other records kept by electronic means, photographs or mechanical means, and other things similar to any of the foregoing.

2. To “identify” a document means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- (a) the title or other means of identification of the document;
- (b) the date of the document;
- (c) the author of the document;
- (d) the recipient or recipients of the document;
- (e) the subject matter of the document;
- (f) the present location of any and all copies of the document; and
- (g) the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof.

3. “Person” means natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

4. To “identify” a person means to state the person’s full name, present or last known address and telephone number, and present or last known business affiliation and title.

5. The phrase “contact or communication” includes all instances in which information has been transmitted from one person or entity to another, including, but not limited

to, telephone conversations, meetings, conferences, correspondence, other mailings, telexes, cables, telecopied transmissions, or other data transmissions of any type or nature, whether oral, electronic, or written.

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7. The term “entity” means corporations, companies, businesses, partnerships, proprietorships, or fictitious or trade names.

8. The singular and masculine form of any word shall embrace, and shall be read and applied as embracing, the plural, the feminine, and the neuter.

9. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the request for production all responses which might otherwise be construed to be outside the scope.

10. The term “each” includes the word “every” and “every” includes the word “each.” The term “any” includes the word “all” and “all” includes the word “any.” The terms “and” as well as “or” shall be construed either disjunctively or conjunctively so as to bring within the scope of the request for production responses that which might otherwise be construed to be outside the scope.

11. “Basic Sports Apparel,” “BSA,” “You,” or “Your” means the Defendant in the above-titled action.

12. “BSA Goods” means the items listed in the description of the goods in the Application and the Registration, namely “jackets, pullovers, hats, jeans, T-shirts, vests, shorts, underwear, shoes, socks, gloves, headbands and scarves.”

CLAIMS OF PRIVILEGE

If you contend that you are entitled on the basis of any claim or privilege to withhold any document, provide the following information with request to such document:

- (a) the subject-matter of the document;
- (b) the date of the document;
- (c) the identities of all persons who have ever had possession of the document;
- (d) the basis of or grounds for the claim of privilege;
- (e) the person on whose behalf the claim of privileges is being asserted; and
- (f) the request to which the document is responsive.

DOCUMENT FORMAT

Documents are to be produced electronically in TIEFF and/or .pdf format, and sent by email to jriola@cfjblaw.com, cc: dearlucchi@cfjblaw.com. Large documents may be sent as .zip files and/or on CD-ROM or hard copy.

DOCUMENTS TO BE PRODUCED

1. All depositions (including copies of videotaped depositions) of Nadia Chowaiki taken in any litigation against whom BSA brought a claim or counterclaim for infringement of the Registration;
2. All agreements, drafts, memoranda of understanding, letter(s) of intent, correspondence, and other documents relating or referring to the (potential) acquisition by a third party of the SPIRA trademark and trademark license from Spira Footwear, Inc. and BSA, as referenced in the February 24, 2016 deposition of David Chowaiki.
3. All documents submitted to the bankruptcy court and/or to BSA creditors relating or referring to secured and unsecured claims to assets or potential assets had by BSA during the course of its Chapter 11 proceeding.

4. All tax returns, ledgers, profit and loss statements, and audited and unaudited financial statements from 1997 to the present.

5. All agreements, purchase orders, invoices, payments, and other documents relating or referring to the distribution, marketing, promotion, advertising, and/or sale of SPIRAL-branded BSA goods by Overstock.com.

6. All agreements, purchase orders, invoices, payments, and other documents relating or referring to the distribution, marketing, promotion, advertising, and/or sale of SPIRAL-branded BSA goods by Spiral and Spira retail stores.

7. All documents supporting Your claims in the February 24, 2016 depositions of Hilel Chowaiki and David Chowaiki that BSA intends to open more Spiral retail stores in 2016, 2017, 2018, and 2019.

8. All documents supporting the denial of any response to the First Request for Admission where BSA's response was anything other than an unqualified admission.

Respectfully submitted this 29th day of February, 2016.

/s/David E. Cannella

CARLTON FIELDS

David E. Cannella

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Jill Sarnoff Riola

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Suite 500

Orlando, FL 32801

Phone: 407-849-0300

CERTIFICATE OF SERVICE

The undersigned certifies that on February 29th, 2016, he served the foregoing document on counsel for Defendant by email at the following email address:

Edmund J. Gegan
BKN Murray, LLP
100 2nd Avenue North, Suite-240
St. Petersburg, FL 33701
egegan@BKNmurray.com

/s/ David E. Cannella

David E. Cannella
Carlton Fields Jordan Burt