UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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| ATLANTIC RECORDING CORPORATION, *et al.*, | ) | |
| | ) | |
| Plaintiffs/Counterclaim Defendants, | ) | |
| | ) | |
| vs. | ) | Cause No. 4:06CV01708 CEJ |
| | ) | |
| JENNA RALEIGH, individually and on behalf of all others similarly situated, | ) | |
| | ) | |
| Defendant/Counterclaim Plaintiffs. | ) | |

**DEFENDANT'S RESPONSE TO**
**PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

Defendant Jenna Raleigh ("Raleigh) opposes Plaintiffs' Motion to Compel Discovery because it seeks to impose a higher discovery standard on Raleigh than that required under the Federal Rules of Civil Procedure. Plaintiffs want to compel Raleigh to provide information that she simply does not have, and which is public and equally accessible to Plaintiffs. For these reasons, as more fully discussed below, the motion should be denied.

**INTRODUCTION**

As an initial matter, Plaintiffs' so–called "introduction" is self–serving, irrelevant, and incomplete. Plaintiffs' regalement of how they have been forced to lay off workers because of file sharing is completely irrelevant to the issue at hand. Additionally, while they stress the affidavit provided by Jenny Kopp denying involvement, Plaintiffs overlook and fail to mention that Raleigh provided them with

a similar affidavit denying involvement. Plaintiffs' reference to an "obvious username match" between Raleigh and "jenaRal@KaZaA" is fallacious. Anyone can register any available username they like on Kazaa.com, even if it is made to resemble someone else's name. Finally, if this user name was created by and belonged to Raleigh – whose first name is Jenna – it would mean that she misspelled her own name.

## DISCUSSION

### I. Raleigh answered Plaintiffs' discovery requests to the best of her abilities.

Raleigh's obligation under the law is clear and well–established: "[A] party interrogated need only answer matters of fact within his knowledge and is not required, ordinarily, to search out information, or to state opinion or hearsay[.]" *Robinson v. Tracy*, 16 F.R.D. 113, 116 (W.D. Mo. 1954); *Onofrio v. American Beauty Macaroni Co.*, 11 F.R.D. 181, 184-85 (W.D. Mo. 1951) (same); *see also, Lugo v. Heckler*, 98 F.R.D. 709, 714 (E.D. Pa. 1983) ("Where an alternative is available, no party should be required to do independent research in order to acquire information with which to answer interrogatories"); 8A Wright & Miller, Federal Practice & Procedure § 2174 ("[A] party should provide relevant facts readily available to it but should not be required to enter upon independent research in order to acquire information merely to answer interrogatories. If the data is equally available to both parties, the party seeking the information should do its own research"). Contrary to Plaintiffs' assertions, Raleigh provided full and complete responses to their discovery requests. She answered Plaintiffs' discovery with all facts within her knowledge.

Only three Interrogatories are at issue in Plaintiffs' motion:

| **Interrogatory** | **Answer** |
|---|---|
| 1. For each COMPUTER located at YOUR residence during the three years prior to the date the Complaint in this action was filed, IDENTIFY the COMPUTER by brand name; model number; serial number; and MAC address(s). | eMachine, model number, serial number and MAC address(s) unknown. Raleigh does not know the brand name, model number, serial number or MAC address(s) of any other computers located at her residences during the three years prior to the date the Complaint in this action was filed. |
| 4. IDENTIFY any and all PERSONS who resided with YOU during the three years prior to the date the Complaint in this action was filed. | The following sorority girls lived with Defendant Raleigh during the 2003-2004 school year in the Delta Zeta house at Southwest Missouri State University on Elm St. in Springfield, Missouri: [names omitted].<br><br>The following girls lived with Defendant Raleigh at the Springfield Lofts in Springfield, Missouri: [names omitted]. |
| 5. IDENTIFY any and all PERSONS with whom you shared a room during the 2003-2004 academic year. | Defendant Raleigh shared a room with the following individuals during the 2003-2004 academic year: [names omitted]. |

Plaintiffs' Interrogatories define the term "IDENTIFY" (with respect to persons) to mean "*to the extent known*, the person's full name, present or last known address, and when referring to a natural person, additionally, their age, relationship to YOU an their present or last known place of employment" (emphasis added). First Set of Interrogatories at 2 (Exhibit 1). Plaintiffs do not define the term "IDENTIFY" with respect to non-persons.

Raleigh's counsel has explained to Plaintiffs' counsel that neither Raleigh nor

anyone in her family has custody or control of the computer, nor has any information as to its current whereabouts or conditions– they got rid of it after she graduated in 2004. While Raleigh's father, who owned the computer, recalled the brand name (eMachines), neither he nor Raleigh recall or have any record of the model, serial number or MAC address. In short, if Raleigh had knowledge or control of any documents with such information, she would have provided it.

Raleigh, to the extent known, identified the persons responsive to Interrogatories Nos. 4 and 5. That alone makes her responses sufficient in light of Plaintiffs' definitions. Regardless, her responses are not deficient, or properly the subject of a motion to compel, simply because she lacks knowledge or does not possess all of the information sought by the term "IDENTIFY." Raleigh has not kept in touch with her sorority sisters or maintained a memory of their ages, former telephone numbers, email addresses, exact street address, etc., and therefore does not have all the information sought by the term "IDENTIFY."

As to Interrogatory No. 5 seeking the identity of persons with whom she shared a room, Raleigh provided a full and complete response. This Interrogatory asks Raleigh to "identify any and all persons with whom you shared a room during the 2003-2004 academic year." A sorority house residence, unlike a dormitory residence, consists of numerous rooms, and a sorority house is, by its very nature, a communal environment. Because each of the listed individuals had access to her computer, Raleigh's space was shared with each of them, again a fact disclosed to Plaintiffs' counsel before this motion was filed. If Plaintiffs want to know whose bed was in the

same room as Raleigh's, they are free to serve additional discovery, but that was not the question Plaintiffs asked in Interrogatory No. 5.

## II. The Court should assess Plaintiffs with Raleigh's costs to defend this Motion.

As Plaintiffs point out, Rule 37(a)(5) provides for payment of a moving party's reasonable costs to bring a motion to compel if that motion is granted in certain circumstances. However, as demonstrated above, this is not one of those circumstances.

A decision whether to assess costs should focus on Plaintiffs' conduct instead of Raleigh. Because Plaintiffs' motion should be denied, the question of their costs is immaterial. When a motion is denied, a court "must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees." Fed. R.Civ. P 37(a)(5)(B). Raleigh responded to Plaintiffs' Interrogatories at issue with all the information she had, and Plaintiffs' counsel was made aware of this before this Motion to Compel was filed. Thus, Plaintiffs' motion should be denied and Raleigh's costs assessed against Plaintiffs.

Alternatively, even if the Court were to grant (in whole or in part) Plaintiffs' motion, Rule 37(a)(5)(A) prohibits the award of costs in these circumstances. Addressing the issue of costs for a prevailing movant, Rule 37 provides that "the court must not order this payment if: . . . (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of

expenses unjust." As discussed above, Raleigh responded to the propounded discovery in good faith and to the limits of her personal knowledge and information, – to the extent known, just as requested – thus fulfilling her obligation. Consequently, her responses were "substantially justified," which under Rule 37 shields her from being assessed with Plaintiffs' costs in bringing their motion.

## III. Conclusion

Because Raleigh has answered Plaintiffs' Interrogatories Nos. 1, 4 and 5 to the fullest extent of her knowledge, Plaintiffs' Motion to Compel should be denied and costs of her defense assessed against Plaintiffs.

Respectfully submitted,

GREEN JACOBSON P.C.

By: /s/ Jonathan F. Andres

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## CERTIFICATE OF SERVICE

I certify that on December 3, 2008, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system, upon the following named counsel of record: John D. Ryan, Esq.

I certify that on December 3, 2008, copies of the foregoing were mailed to each of the following named non-participants in Electronic Case Filing: None.

/s/ Jonathan F. Andres