

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ATLANTIC RECORDING )  
CORPORATION, *et al.*, )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 4:06-cv-01708-CEJ  
 )  
JENNA RALEIGH, )  
 )  
Defendant. )  
 )

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO COMPEL  
DISCOVERY**

Plaintiffs respectfully submit this reply memorandum in further support of their motion to compel Defendant Jenna Raleigh (“Defendant”) to provide full and complete responses to Plaintiffs’ First Set of Interrogatories (Doc. No. 53). For the reasons set forth below and in Plaintiffs’ opening brief, Plaintiffs’ motion to compel (the “Motion”) should be granted.

**INTRODUCTION**

In their Motion and supporting documents, Plaintiffs demonstrated that Defendant is refusing to provide: 1) contact information for sorority sisters that Defendant listed both as potential witnesses in her Rule 26(a) initial disclosures and in her Responses to Interrogatories No. 4 and 5, 2) the names and contact information for her roommates during the 2003-04 academic year, and 3) the model number, serial number, and MAC address of her computer.<sup>1</sup> This information is directly relevant to Plaintiffs’ claims for copyright

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<sup>1</sup> In her Response in Opposition to Plaintiffs’ Motion to Compel (“Def.’s Response,” Doc. No. 54), Defendant clarified that “eMachines” was the brand name of her computer.

infringement and available to Defendant. Accordingly, Plaintiffs sought an Order compelling Defendant to provide this information to Plaintiffs and for an award of reasonable expenses incurred in bringing the Motion. (Motion, Doc. No. 53.)

In response, Defendant raised three arguments. One, that she is not obligated to provide contact information for her sorority sisters because she “answered Plaintiffs’ discovery requests to the best of her abilities” and “with all facts within her knowledge.” (Def.’s Response, p. 2.) Two, that she is not required to provide the names of her roommates because Plaintiffs did not define her roommates as persons “whose bed was in the same room as [Defendant’s].” (*Id.*, p. 4–5.) And three, that Defendant is not required to provide any more identifying information about her computer because she has no information to offer. For the reasons set forth below, all three arguments fail.

Finally, Defendant’s request that the Court assess Plaintiffs with the costs to defend the Motion is without merit. Defendant has failed to provide good faith responses to Plaintiffs’ discovery requests and can forward no substantial justification for her evasive and incomplete answers. Indeed, Defendant’s lack of good faith requires that the Court award Plaintiffs their reasonable expenses in bringing this Motion.

## **DISCUSSION**

### **I. The Federal Rules Require Defendant To Provide Her Sorority Sisters’ Contact Information.**

Despite her argument to the contrary, Defendant has not satisfied her “obligations under the law” (Def.’s Response, p. 2.) by responding to Interrogatory No. 4 with a list of the names of individuals in her sorority. “A party to civil litigation in the federal system is under

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Accordingly, Plaintiffs have dropped “brand name” of the computer from the list of information they seek to compel.

a severe duty to make every effort to obtain [information requested during discovery] . . . .” *Frontier-Kemper Constructors, Inc. v. Elk Run Coal Co.*, 246 F.R.D. 522, 529 (S.D. W. Va. 2007). “[U]nder the Federal Rules [Defendant] cannot avoid giving an answer to an interrogatory by an allegation of ignorance<sup>2</sup> if [Defendant] can obtain the information from sources under its control.” *Nat’l Labor Relations Bd. v. Rockwell-Standard Corp.*, 410 F.3d 953, 958 (6th Cir. 1969) (ordering production of information regarding employees of a third party where “there was no good faith compliance with the [discovery requests] by an attempt to furnish all the information available to the [deponent]”); *see also* 7-33 MOORE’S FEDERAL PRACTICE – Civil § 33.102 (“A party answering interrogatories has an affirmative duty to furnish any and all information available to the party.”). Accordingly, Defendant must make a good faith effort to produce information that is available to her in response to Plaintiffs’ discovery requests.

Defendant has failed to make a good faith effort to produce her sorority sisters’ identifying information here. Instead, she argues that her response to Interrogatory No. 4 is adequate because “she has not kept in touch with her sorority sisters” and therefore does not have knowledge of their contact information. (Def.’s Response, p. 4.) This argument lacks credibility. Defendant herself affirmatively named the same 119 sorority sisters in her Rule 26(a) initial disclosures as potential witnesses in this case. Moreover, as of the date of this Motion, Defendant is connected as a “friend” with many of these sorority sisters on the social networking website, [www.facebook.com](http://www.facebook.com). Defendant’s feigned lack of knowledge of her sisters’ contact information is exactly the sort of “allegation of ignorance” disallowed by the

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<sup>2</sup> Defendant argues that when a party does not “maintain[] a memory” of information requested by interrogatories, then she is not required to locate the responsive information. (Def.’s Response, pp. 2 and 4.) This is clearly not the law.

Federal Rules. *Rockwell-Standard Corp.*, 410 F.3d at 958. It defies common sense that Defendant would not know any contact information for even one of these 119 individuals. Moreover, the requested information is likely available to Defendant through her sorority's alumni directory or website.<sup>3</sup> Accordingly, the Court should Order Defendant to produce contact information, including the present or last known address, age, telephone number, and e-mail address for each of the individuals identified in response to Interrogatory No. 4.

**II. Defendant's Refusal to Provide the Names of Her Roommates During the 2003–04 Academic Year is Evasive and Without Justification.**

Interrogatory No. 5 seeks to identify Defendant's roommates for the 2003–2004 academic year. Defendant responded with the same list of 119 sorority sisters she identified as housemates in her response to Interrogatory No. 4, which requested names and contact information for persons that resided in the same house. She justifies her meaningless response by torturing the language of the Interrogatory and the definition of a sorority house to conclude that because a sorority house is a "communal environment," all housemates shared her room. (Def.'s Response, p. 4.) To the extent Defendant believes that Interrogatory No. 5 is vague, she failed to object to the Interrogatory when she responded and therefore has waived any such objection. Fed. R. Civ. P. 33(b)(4). It is clear from Defendant's response, however, that she knows exactly what information Plaintiffs seek, and that she has such information:

If Plaintiffs want to know whose bed was in the same room as [Defendant's], they are free to serve additional discovery, but that was not the question Plaintiffs asked in Interrogatory No. 5.

(Def.'s Response, pp. 4–5.)

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<sup>3</sup> Defendant's sorority has a local website with an alumni login link at [www.dzmostate.com](http://www.dzmostate.com).

Defendant's gamesmanship is a waste of Plaintiffs' and this Court's time and resources and should not be rewarded. Common sense dictates that Plaintiffs are inquiring into Defendant's housemates ("PERSONS who resided with YOU") in Interrogatory No. 4, and her roommates ("PERSONS with whom you shared a room"), as that term is commonly understood, in Interrogatory No. 5. Indeed, Defendant clearly understands that Interrogatory No. 5 requests the names and contact information of her roommates as evidenced by the coy response in her pleading. Defendant has a duty to provide complete, candid, and non-evasive responses to Plaintiffs' Interrogatories. Defendant is seeking to avoid that duty by deliberately misconstruing Plaintiffs' Interrogatory No. 5. Accordingly, Defendant should be compelled to provide the names and contact information of her roommates, information which she clearly has.

### **III. Defendant Must Make A Good Faith Effort To Identify Her Computer.**

If Defendant, in response to a discovery request, "cannot furnish the information and details required, [D]efendant must so state under oath and should set forth in detail the efforts made to obtain the information." *Budget Rent-a-Car of Missouri, Inc. v. Hertz Corp.*, 55 F.R.D. 354, 357 (D. Mo. 1972). Here Defendant states she has no knowledge or control of any documents from which she can identify the model number, serial number, or MAC address of her computer, as she no longer has possession of the computer. (Def.'s Response, p. 4.) As stated above, Defendant has a duty to make reasonable efforts to obtain information responsive to discovery requests. *See Elk Run Coal Co.*, 246 F.R.D. at 529. That duty is particularly apt here, where Defendant at one time had the responsive information in her possession. Plaintiffs therefore request that Defendant "set forth in detail the efforts made to obtain the [computer's identifying] information." *Hertz Corp.*, 55 F.R.D. at 357. A general

statement that she no longer has responsive information, without more, is not adequate under the Federal Rules.

**IV. The Court Should Award Plaintiffs Its Reasonable Expenses Because No Substantial Justification Exists For Defendant's Nondisclosure Of The Requested Information.**

Defendant argues her responses to Plaintiffs' discovery requests were "substantially justified" and thus the Court should not assess Plaintiffs' expenses in bringing this Motion. For the reasons discussed above, Defendant has failed to provide adequate responses to Plaintiffs' Interrogatories and has engaged in unnecessary gamesmanship in the process. Accordingly, and for the reasons forwarded in Plaintiffs Opening Brief, the Court should award Plaintiffs its reasonable expenses associated with bringing this Motion.

**CONCLUSION**

For the foregoing reasons, Plaintiffs request that the Court compel Defendant to provide adequate responses to Plaintiffs' Interrogatories as outlined above, and order Defendant to pay Plaintiffs' reasonable expenses in bringing this Motion.

Respectfully submitted,

Dated: December 10, 2008

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