

I. PLAINTIFFS' DISCOVERY REQUESTS ARE IRRELEVANT, OVERBROAD, AND UNDULY BURDENSOME UNDER FRCP 26(b)(2)(C)

Plaintiffs once again have demanded that Joel devote burdensome amounts of time and effort to producing information that is irrelevant to their claims and invasive of his privacy, contrary to Rule 26(b)(2)(C) of the Federal Rules of Civil Procedure. The requested information and materials have no significant bearing upon Plaintiffs' claims, which are limited to allegations that Joel infringed and possibly continues to infringe specific songs for which Plaintiffs claim copyright. See Plaintiffs' Complaint, filed August 07, 2007, at ¶ 11-13 and accompanying listing of songs in Exhibits A-B.

a. REQUEST FOR PRODUCTION NO. 19

Request for Production No. 19 ("RFP 19") requires that Joel produce "Any and all documents, communications and/or correspondence regarding copyright infringement over the Internet and/or this pending litigation ... in your possession, custody, or control." This request is unduly burdensome pursuant to FRCP 26(b)(2)(C) because it is overbroad, irrelevant, and invasive of Joel's privacy. RFP 19 seeks all of Joel's correspondence related to "copyright infringement over the Internet" – a broad subject area of which this action is but a small part. It is likely that the vast majority of these materials have no bearing upon this case. Similarly, the request asks for all of Joel's correspondence related to this action, yet Plaintiffs have given no reason to suggest that any of this correspondence is relevant as evidence. Such correspondence is likely to consist primarily of protected attorney-client communications, private communications with Joel's family, and other forms of private communication that would be useful to Plaintiffs only in for the purpose of intruding as much as possible upon Joel's life. The very demand upon Joel to spend time and resources on such a task of self protection is itself evidence of the abuse this litigation has imposed already on Joel and his family.

b. REQUEST FOR PRODUCTION NO. 20

RFP 20 requires that Joel produce "Every compact disc ("CD") that YOU have burned from sound recordings located in any share folder associated with any online media distribution system or

peer-to-peer network from January 1, 2003 to date, including but not limited to Napster, KaZaA, and/or Limewire.” RFP 20 is improper because Joel's burned CDs are not relevant to any issue present in this case and producing them would require an unduly burdensome amount of time and effort. Plaintiffs have alleged and have asserted that they have evidence suggesting that Joel downloaded and shared certain specified songs on the KaZaA file-sharing network. Plaintiffs have not brought any claim involving Joel's activities in burning CDs, and Plaintiffs' motion does not present sufficient reasoning to support production of the CDs. Plaintiffs claim that the CDs constitute “direct evidence” of Joel's file-sharing activities. See Plaintiffs' motion at 4. However, Plaintiffs already claim to have the necessary information regarding Joel's file-sharing activities – consisting primarily of the evidence they have obtained from MediaSentry – which renders this RFP 20 improperly duplicative under FRCP 26(b)(2)(C). Additionally, Joel's “music tastes” have no bearing on whether Joel actually infringed Plaintiffs' copyrights. Id.

Furthermore, RFP 19 places a significant burden on Joel. The request would require him to locate every burned CD that he has produced in the past, determine the date on which each was produced, and distinguish between the CDs that might contain files downloaded from peer-to-peer services and which do not. It would be difficult if not impossible for Joel to determine all of these factors with certainty, yet Plaintiffs noted in their motion that RFP 19 requires Joel to locate between 60-500 CDs in this manner. Id. Given the CDs' scant relevance to this action, such a considerable expense of effort on Joel's part is improper. The very demand upon Joel to spend time and resources on such a task of self protection is itself evidence of the abuse this litigation has imposed already on Joel and his family.

c. REQUEST FOR PRODUCTION NO. 21

RFP 21 requires that Joel produce “A photocopy of every CD YOU own.” This request is unduly burdensome pursuant to FRCP 26(b)(2)(C) because it is overbroad and irrelevant. Plaintiffs have presented no argument suggesting that Joel's CD collection is relevant to their claims. As stated

above, Joel's "music tastes" are not relevant as to whether he actually infringed Plaintiffs' songs. Similarly, Plaintiffs have not presented any rationale supporting the relevance of their contention that Joel may have copied certain songs from CDs rather than downloading them. See Plaintiffs' motion at 4. Plaintiffs made no attempt to tailor this request in a way designed to produce relevant evidence – such as by limiting the scope to CDs that include the songs at dispute in this action – but instead have asked for the entirety of Joel's CD collection. Given the lack of evidence and the significant time and effort involved in photocopying an entire CD collection, this request places a significant burden on Joel. The very demand upon Joel to spend time and resources on such a task of self protection is itself evidence of the abuse this litigation has imposed already on Joel and his family.

d. REQUEST FOR PRODUCTION NO. 22

RFP 22 requires that Joel produce "A photocopy of the front cover of every CD YOU own." This request is improper under FRCP 26(b)(2)(C), which mandates denial of any request that is "unreasonably cumulative or duplicative." RFP 22 is nearly identical to RFP 21 and would offer no additional information. Additionally, RFP 22 is overbroad and irrelevant for the same reasons described in the preceding discussion of RFP 21. The very demand upon Joel to spend time and resources on such a task of self protection is itself evidence of the abuse this litigation has imposed already on Joel and his family.

e. WRITTEN INTERROGATORY NO. 26

Interrogatory No. 26 requires that "For each compact disc ("CD") produced in Response to Request for Production No. 20, IDENTIFY the date each sound recording contained on the CD was downloaded and the online media distribution system or peer to peer network used to download the sound recordings contained on the CD, including but not limited to Napster, KaZaA, and/or LimeWire." This interrogatory is unduly burdensome pursuant to FRCP 26(b)(2)(C) because it is overbroad and irrelevant. For the reasons discussed above, the requested CDs are not relevant to the issues in dispute. Therefore, information regarding the CDs similarly is irrelevant.

Additionally, Defendant is unaware of any method for ascertaining the information Plaintiffs seek. Burned CDs do not contain information regarding the dates on which songs were downloaded from a peer-to-peer network – or, for that matter, information regarding whether the songs were downloaded from a peer-to-peer network at all. Because the computer on which the alleged infringements occurred no longer exists, Defendant cannot ascertain the requested information from that source either. The very demand upon Joel to spend time and resources on such a task of self protection is itself evidence of the abuse this litigation has imposed already on Joel and his family.

II. PLAINTIFFS HAVE EXCEEDED THEIR LIMIT OF 25 WRITTEN INTERROGATORIES UNDER FEDERAL RULES OF CIVIL PROCEDURE

Plaintiffs' Written Interrogatory No. 26 is improper under FRCP 33(a)(1), which states that parties are allowed “no more than 25 written interrogatories” unless otherwise stipulated or ordered by the Court. Joel has not stipulated to additional interrogatories and is not aware of any Court order allowing Plaintiffs to request interrogatories beyond the permitted 25. FRCP 33(a)(1) conditions additional interrogatories on the requirements of FRCP 26(b)(2), which Plaintiffs' Written Interrogatory No. 26 fails as discussed in section I(e) of this document.

III. DEFENDANT DID NOT WAIVE RIGHT TO OBJECT

Plaintiffs failed to note in their motion that a court may excuse for good cause a failure to respond to an interrogatory or request for production. See FRCP 33(b)(4). Defendant Joel Tenenbaum respectfully requests that the Court consider the above objections to Plaintiffs motion on the ground that that Plaintiffs' requests are improper under FRCP 26 as discussed above. Additionally, Defendant further requests that the Court consider the above objections on the ground that Plaintiffs have accelerated their unduly burdensome and abusive litigation tactics in recent months with full knowledge that Joel's counsel are a professor of law and students who have been dealing with end of semester activities. Plaintiffs' counsel have forced Joel's counsel to conduct litigation in three states and counting and have continually requested irrelevant information from Joel and his family. For these

reasons it is understandable that Joel's responses have been slower than Plaintiffs' counsel might prefer.

IV. CONCLUSION

For the foregoing reasons, Defendant Joel Tenenbaum respectfully requests that the court hear Plaintiffs' Motion to Compel Discovery Responses on January 22, 2009, and then deny it.

Dated: January 12, 2009.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 12, 2009, a copy of the foregoing **OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES** was served upon the Plaintiffs via first class mail, postage pre-paid, and electronic mail (where available), at the following addresses:

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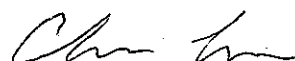
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