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VEOH NETWORKS, INC.

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 UMG RECORDINGS, INC., *et al.*
20 Plaintiffs,

21 v.

22
23 VEOH NETWORKS, INC, *et al.*
24 Defendants.

Case No. CV 07 5744 – AHM (AJWx)

**VEOH'S STATEMENT OF NON-
OPPOSITION TO UMG'S MOTION
TO COMPEL VEOH TO APPEAR
AT DEPOSITIONS**

Hearing: December 8, 2008
Courtroom: 690

Discovery Cut-Off: January 12, 2009

1 Veoh hereby files this Statement of Non-opposition in response to Plaintiffs'
2 motion to compel Veoh to appear at [a second] Rule 30(b)(6) deposition, filed
3 November 12, 2008 ("Motion").

4 **I. VEOH'S OFFER TO STIPULATE TO THE RELIEF SOUGHT**

5 Despite the fact that through their Motion Plaintiffs seek to obtain a *second*
6 30(b)(6) deposition of Veoh (on twenty-nine additional topics) while simultaneously
7 refusing to provide Veoh dates for Veoh's *first* 30(b)(6) deposition of Plaintiffs (which
8 deposition Veoh noticed *four months ago*), Veoh nonetheless, in an effort to resolve
9 this matter informally, offered on November 24 to stipulate to permit each side to
10 serve up to three, non-duplicative 30(b)(6) notices.¹ Plaintiffs' counsel acknowledged
11 that this would resolve all issues raised in the Motion, as Plaintiffs did not believe
12 there would be any need for more than three 30(b)(6) notices in any event.
13 (Declaration of Rebecca Lawlor Calkins ["Calkins Decl. ¶ 5]).

14 Despite acknowledging that Veoh's offer would satisfy Plaintiffs' 30(b)(6)
15 needs, Plaintiffs did not promptly stipulate in good faith on the issue of additional
16 30(b)(6) notices and allow this motion to come off the Court's overburdened calendar.
17 Instead, Plaintiffs opted to withhold any agreement to stipulate unless and until Veoh
18 agreed to Plaintiffs' defiance of this Court's November 20 order instructing Plaintiffs
19 to provide Veoh dates for Plaintiffs' 30(b)(6) witnesses by November 24 ("Order").
20 (Calkins Decl. ¶ 6). In other words, Plaintiffs attempted to use Veoh's good faith
21 effort to resolve the issue herein as a bargaining chip in an attempt to gain support for
22 Plaintiffs' failure to comply with this Court's Order.

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27 ¹ Veoh also requested that Plaintiffs eliminate Topic No. 10 and narrow Topics 6, 12,
28 13, 20, 23 in Plaintiffs' second 30(b)(6) notice, which Plaintiffs agreed to do. Veoh
expressly stated that this was without prejudice to Veoh's right to assert other
objections to topics and Veoh expressly reserves all rights.

1 **II. VEOH'S DISCUSSIONS WITH PLAINTIFFS' COUNSEL**

2 Veoh's counsel had multiple telephone calls with Plaintiffs' counsel on
3 November 24, during which Veoh suggested that the parties stipulate to each side
4 taking additional, non-duplicative 30(b)(6) depositions. During these calls, Veoh's
5 counsel also identified certain particularly problematic topics in Plaintiffs' second
6 30(b)(6) notice. Plaintiffs' counsel agreed to eliminate Topic No. 10 and to narrow
7 and clarify Topics Nos. 6, 12, 13, 20, 23. (Calkins Decl. ¶ 10). After checking
8 internally, Plaintiffs' counsel reported that he thought the stipulation would be fine,
9 but asked that Veoh provide a date as to when Veoh believed it would be in a position
10 to provide dates for Plaintiffs' second 30(b)(6) deposition. (Calkins Decl. ¶ 7).

11 Veoh responded that it could provide dates for its designees on December 4,
12 2008. At approximately 7:00 p.m. November 24, Plaintiffs' counsel stated he would
13 send internal emails with the information immediately, and would get back to Veoh's
14 counsel as soon as possible. (Calkins Decl. ¶ 8). At 10:36 p.m., Plaintiffs' counsel
15 emailed Veoh, suddenly conditioning the stipulation to three non-duplicative 30(b)(6)
16 notices for each side on a demand that Plaintiffs' own obligation pursuant to the Order,
17 *i.e.* to produce dates for Veoh's first 30(b)(6) notice by November 24, be pushed back
18 ten additional days to December 4, raising the familiar argument that "UMG cannot be
19 in a position where Veoh has all of UMG's dates, but UMG has none of Veoh's."
20 (Calkins Decl. ¶¶4, 9, Exh. C). Plaintiffs made no mention of the Order in that email,
21 but it was clear Plaintiffs already planned to defy the Order, as an earlier
22 communication from Plaintiffs on the subject provided dates for only two designees
23 covering only four of Veoh's forty-one topics.²

24 As Plaintiffs' counsel responded to Veoh too late in the evening on November
25 24 to permit Veoh to file its responsive pleading that day, Veoh's Statement of Non-
26 opposition is presented today.

27
28 ² Plaintiffs identified three designees but failed to provide dates for the third.

1 **III. CONCLUSION**

2 As Veoh will appear in connection with Plaintiffs' second 30(b)(6) notice on a
3 date to be agreed upon by counsel, no hearing on Plaintiffs' Motion is necessary.
4

5 Dated: November 25, 2008

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