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WILLIAM ADAMS; STACY FERGUSON; ALLAN PINEDA; and JAIME GOMEZ, all individually and collectively as the music group THE BLACK EYED PEAS; will.i.am music, llc; TAB MAGNETIC PUBLISHING; CHERRY RIVER MUSIC CO.; HEADPHONE JUNKIE PUBLISHING, LLC; JEEPNEY MUSIC, INC.; EMI APRIL MUSIC, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRYAN PRINGLE, an individual,

Plaintiff,

v.

WILLIAM ADAMS, JR.; STACY FERGUSON; ALLAN PINEDA; and JAIME GOMEZ, all individually and collectively as the music group the Black Eyed Peas; DAVID GUETTA; FREDERICK RIESTERER; UMG RECORDINGS, INC.; INTERSCOPE RECORDS; EMI APRIL MUSIC, INC.; HEADPHONE JUNKIE PUBLISHING, LLC; WILL.I.AM. MUSIC, LLC; JEEPNEY MUSIC, INC.; TAB MAGNETIC PUBLISHING; CHERRY RIVER MUSIC CO.; SQUARE RIVOLI PUBLISHING; RISTER EDITIONS; and SHAPIRO, BERNSTEIN & CO.,

Defendants.

Case No. SACV10-01656 JST (RZx)

Hon. Ralph Zarefsky
Courtroom 540

[DISCOVERY MATTER]

JOINT STIPULATION ON MOTION BY DEFENDANTS TO COMPEL SUPPLEMENTAL RESPONSES BY PLAINTIFF BRYAN PRINGLE TO INTERROGATORIES AND FOR MONETARY SANCTIONS

Date: January 23, 2012
Time: 10:00 a.m.
Courtroom: 540

Disc. Cut-Off: November 14, 2011
Pretrial Conf.: February 13, 2012
Trial Date: February 28, 2012

Pursuant to Local Rule 37, Defendants William Adams; Stacy Ferguson; Allan Pineda; and Jaime Gomez, all individually and collectively known as the music group The Black Eyed Peas; will.i.am music, llc; Tab Magnetic Publishing; Cherry River Music Co.; Headphone Junkie Publishing, LLC; Jeepney Music, Inc.; EMI April Music, Inc. (collectively, "Defendants"); and plaintiff Bryan Pringle ("Plaintiff") (collectively, the "Parties") submit this Joint Stipulation on Defendants' Motion to Compel further responses to interrogatories propounded by Defendant Stacy Ferguson and Defendant Headphone Junkie Publishing, LLC, to strike or otherwise overrule Plaintiff's meritless objections to certain interrogatories, and for an award of sanctions for the attorneys' fees to bring this Motion in the amount of $15,000.00.

All attempts to obtain clear, unequivocal and unambiguous disclosure of key underlying facts regarding the issues in this case have failed. A Court Order is required to obtain appropriate responses from Plaintiff.

The Parties have met and conferred on the matters set forth below, as required by Local Rule 37-1, but have been unable to reach a resolution to the issues presented herein.

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INTRODUCTORY STATEMENT BY DEFENDANTS

This action involves a single count of copyright infringement.[1] (Pink Decl. ¶ 2.) Plaintiff contends Defendants use a certain guitar twang sequence in the musical bed of the song "I Gotta Feeling" recorded and released by The Black Eyed Peas and co-produced by David Guetta and Frederic Riesterer. (Pink Decl. ¶ 2.) Plaintiff has alleged, without evidentiary support, that the three-note chord progression found in the guitar twang sequence originated with him. There is a significant question, however, as to exactly ***when*** and from ***where*** Plaintiff obtained that guitar twang sequence.

This Motion to Compel is mandated because Plaintiff has not been forthright in responding to interrogatories involving: (1) Plaintiff's claimed creation of the guitar twang sequence, (2) Plaintiff's sampling claim,[2] and (3) Defendants' alleged access to Plaintiff's work.

A. Defendants Propounded Discovery To Ascertain Where, How, and When Plaintiff Created The Guitar Twang Sequence

A significant issue in this case since the outset has been exactly where, how, ***and when***, Plaintiff obtained and/or created the guitar twang sequence at issue. Although Plaintiff proffers 1999 as his alleged creation date, Defendants raised a concern over Plaintiff's backdating of his computer files early on, prompting a preservation letter sent to Plaintiff's counsel in July 2010.[3] (Pink Decl. ¶ 4, Exhibit

[1] The lack of merit to the sole copyright infringement count is already part of the record. *See* Dkt. 30, 99 (orders denying the motions of Plaintiff for a temporary restraining order and preliminary injunction.)

[2] Notably, Plaintiff's counsel stated in a November 1, 2011 telephone conference with Defendants' counsel that Plaintiff intended to abandon his sampling claim to the extent it asserts infringement of the sound recording "Take a Dive" (Dance Version) (Copyright Office Reg. No. SR 659-360, dated November 15, 2010). Defendants have proposed to stipulate to dismissal of that portion of Pringle's claim with prejudice, but Pringle's counsel have thus far refused to consent to that proposed stipulation.

[3] In response, Plaintiff's counsel represented that computer hard drives in Pringle's possession would be preserved. This representation turned out not to be truthful.

1; *see also* Dkt. 22-2 [Declaration of Erik Laykin].) Indeed, although Plaintiff claims to have created the guitar twang sequence in 1999, he did not apply to register a copyright to the song containing that sequence until November 2010 -- after Defendants' song had been released.

Early discovery also revealed that Plaintiff and/or his lawyers somehow accessed The Black Eyed Peas' "I Gotta Feeling" and extracted *portions* of Defendants' song to make illegal Internet postings of the same.[4] Plaintiff also has admitted that he accessed "Re-Mixes" of Defendants' "I Gotta Feeling" that were created as part of a DJ re-mix competition. Defendants reasonably believe that computers used by Plaintiff in 2009-2010 contained these sampled portions of Defendants' song, which content is highly relevant to Plaintiff's underlying claim and Defendants' defenses thereto. In particular, those computer hard drives would likely contain evidence that Pringle obtained the guitar twang sequence from re-mixes of Defendants' "I Gotta Feeling," not by independently creating it in 1999 as he claims.

Notwithstanding the significance of those computers, in August 2011, Plaintiff testified at deposition that he "*disposed of*" the corresponding computer hard drive in late December 2010 or early January 2011. (Pink Decl. ¶ 11, Exhibit 7 at pages 34:2-49:20, 190:6-191:23 of deposition.)[5]

After that admission, defendant Headphone Junkie Publishing, LLC's served interrogatories targeted towards obtaining specific information as to the contents of

[4] *See* postings at DRDR313 (http://www.youtube.com/watch?v=Z7drHJ71rIw&noredirect=1) and Plaintiff's Broadjam website (http://www.broadjam.com/altaredstate).

[5] Plaintiff also testified that the entire hard drive was not backed up before disposal, and that temporary internet, program files and system files were not preserved. (Pink Decl. ¶11, Exhibit 7 at pages 49:1-52:11, 56:23-57:21.) Conveniently for Plaintiff, but to the complete detriment to the integrity of these proceedings, this hard drive is "in a landfill" and thus not available to address the issue, accuracy, and integrity of the dating of Plaintiff's computer files. (Pink Decl. ¶ 11, Exhibit 7 at pages 34:2-49:20, 190:6-191:23 of deposition.)

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the hard drive that Plaintiff discarded, along with Plaintiff's purported creation of the guitar twang sequence and alleged access to the works at issue. Plaintiff's responses were deficient in many significant respects. (Pink Decl. ¶13, Exhibit 9.) Among other things, Plaintiff asserted boilerplate, unsupportable objections, provided vague and evasive responses, and failed to answer the questions posed of him. (Pink Decl. ¶13, Exhibit 9.) He also skated the issue of spoliation, utterly failing to answer the interrogatory about what information was contained on the discarded hard drive and the manner in which he disposed of it, thus making attempts to recover it absolutely (and conveniently) impossible. (Pink Decl. ¶13, Exhibit 9 at Interrogatory No. 16.) Plaintiff should be required to respond fully to these interrogatories without improper objections.

B. The Sampling Claim

As indicated above, Plaintiff apparently intends to *abandon* his infringement claim to the extent it is founded on an alleged copying of the sound recording "Take a Dive" (Dance Version)—although Plaintiff has yet to formally do so. While Plaintiff's apparent about-face on this claim comes at the eleventh hour, Defendants remain entitled to a response to the discovery targeted at Plaintiff's lingering "sampling" assertion (which was shown during the preliminary injunction proceedings to be technologically impossible), if for no other reason than to demonstrate that Plaintiff's sound recording claim was objectively baseless and therefore sanctionable. To this end, Plaintiff must respond to the interrogatory propounded by defendant Stacy Ferguson (*i.e.*, Interrogatory No. 18) which specifically seeks the factual basis upon which Plaintiff made his sound recording infringement accusation. (Pink Decl. ¶ 9, Exhibit 5 at Interrogatory No. 18.) Notwithstanding the relevant and appropriate nature of that interrogatory, it was met with improper objections and an evasive response. Indeed, despite a promise to supplement, Plaintiff continues to withhold this information and provided an equally deficient "amended" response. (Pink Decl. ¶ 10, Exhibit 6 at Interrogatory No. 18;

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Pink Decl. ¶ 14, Exhibit 10 at Interrogatory No. 18.)

C. Evolving "Access" Theories

Equally troubling is Plaintiff's evasive and ever-evolving allegations of access. Headphone Junkie Publishing, LLC's interrogatory requests included questions requiring Plaintiff to explain his access theory. Tellingly, *not one single document* has been produced that demonstrates Plaintiff's work was sent to anyone, let alone Will Adams or any of the other Defendants. Instead, these requests were not only objected to on improper grounds, but received the "investigation continues" brush-off. As with his other answers, these responses were incomplete and non-responsive.

Despite the parties' meet and confer efforts, Plaintiff has failed to adequately respond to or supplement his interrogatory responses. (Pink Decl. ¶ 15.) This is legally untenable gamesmanship that, at a minimum, should be met with sanctions in the amount of $15,000.00 (a portion of Defendants' attorneys' fees to bring this motion). (Pink Decl. ¶ 16.)

INTRODUCTORY STATEMENT BY PLAINTIFF

Defendants' Motion is nothing more than an improper attempt to divert attention away from the real issues in this case. Defendants' Motion is based upon two premises that are not only devoid of factual support, but they also flatly contradict the evidence in the record to date. (Dickie Decl. ¶ 2.)

Defendants first claim that Plaintiff has produced no evidentiary support for the proposition that he created the "guitar twang sequence." (Dickie Decl. ¶ 3.) This is simply not true. The evidence in the record establishes conclusively that Plaintiff created the "guitar twang sequence" in 1999. *Id.*

Plaintiff has produced evidence that establishes conclusively that on August 22, 1999, he created several .NRG hard drive images containing music files, including a file containing the "guitar twang sequence," using an Ensoniq ASR-10 Keyboard. (Dickie Decl. ¶ 4.) In addition to producing evidence that he created

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these music files, Plaintiff has also taken significant and considerable steps to preserve this evidence, culminating in the preservation of these key files on a CD-ROM on or about September 9, 1999. (Dickie Decl. ¶ 5.) Plaintiff placed this CD-ROM in the possession of David Gallant, a forensic expert, on December 21, 2010. This expert concluded that:

- August 22, 1999 at 12:54 p.m. was the last time that the music file containing the "guitar twang sequence" was modified;
- The CD-ROM was burned on September 9, 1999 and no new material was added to it after this date;
- The CD-ROM was manufactured on February 24, 1999; and
- The Ensoniq Disk Manager software used to create the image files was purchased on May 18, 1999.

(Dickie Decl. ¶ 5, Ex. A.)

Defendants have produced no evidence to contradict any of the above. Notwithstanding this fact, they now make the reckless and wholly unsupported allegation that Plaintiff first heard the "guitar twang sequence" some time after "I Gotta Feeling" was released in May 2009. (Dickie Decl. ¶ 6.) They then make the incredible claim that Plaintiff somehow defied the time-space continuum by copying the "guitar twang sequence" and using it in his song "Take A Dive" (which was created in 1999). *Id*.

In an email dated August 16, 2011, and then two subsequent letters dated August 22, 2011 and October 31, 2011, respectively, Plaintiff's counsel outlined the absurdity of Defendants' speculation and cautioned Defendants' counsel against making such wildly speculative allegations. (Dickie Decl. ¶ 6, Ex. B.) Plaintiff's counsel also demanded that Defendants produce any evidence that they might have to support their wild assertions. *Id*. Again, Defendants produced nothing.

Instead, Defendants claim that no such evidence exists because Plaintiff and his counsel purposely destroyed it so that they could get away with "downloading

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and manipulation of Black Eyed Peas music and backdating of electronic evidence submitted to the Court." (Dickie Decl. ¶ 8.) Defendants first propounded this ridiculous theory after learning that a hard drive that Plaintiff purchased in 2010 crashed and became unusable before Plaintiff was able to back it up in its entirety (although Plaintiff did back up many files on the hard drive). (Dickie Decl. ¶ 9.) A replacement hard drive that was also purchased in 2010 also crashed, but Plaintiff was able to back up this had drive in its entirety. *Id*. These backed up files were all saved on to a CD-ROM were also placed in the possession of the forensic expert. (Dickie Decl. ¶¶ 9, 11.) These backed up files were placed in the possession of the forensic expert even though they contained no relevant evidence since they were not used to construct any parts of the original versions of "Take A Dive." (Dickie Decl. ¶ 10.)

The actual hard drive that Plaintiff used when he created the "guitar twang sequence" was purchased in the 1990's and stolen in the year 2000, along with the Ensoniq ASR-10 keyboard used to create the "guitar twang sequence." (Dickie Decl. ¶ 10.) Plaintiff produced evidence of this theft in the form of a Police Report. (Dickie Decl. Ex. C.) Plaintiff nonetheless backed up the files from the hard drive prior to the theft, and, as noted above, saved them on the CD-ROM that was delivered to the forensic expert.

On August 8, 2011, Defendants' purported forensic expert was given access to, and a copy of, all of the backed up files on the 1999 hard drive .NRG file as well as the roughly 2500 backed up files from the 2010 and 2011 hard drives. (Dickie Decl. ¶ 11.) On information and belief, Defendants' expert thereafter solicited the opinions of an online technological forum, located at www.digitalfaq.com, as to the creation date of the specific CD-ROM that Plaintiff delivered to the forensic expert on December 21, 2010. The users of this forum confirmed that the disc was manufactured in 1999. (Dickie Decl. Ex. D.)

Notwithstanding Plaintiff's uncontroverted evidence, and the conclusion

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reached by Mr. Gallant, Defendants cling to their speculative and baseless claim in the faint hope of finding some way to discredit the fact that Plaintiff's song "Take A Dive (Dance Version)" was infringed by the Defendants.

Defendants' position in this regard is made more curious and disingenuous by the fact that Defendants have repeatedly thwarted Plaintiff's discovery efforts relating to the Defendants' alleged creation of the "guitar twang sequence" and the fact that Defendants themselves had admitted to spoliating evidence that is directly relevant to the claims made in Plaintiff's complaint. (Dickie Decl. ¶ 14.)

Defendant failed to produce for inspection the materials with which they claim they created the "guitar twang sequence." (Dickie Decl. ¶ 15.) Defendant Riesterer acknowledged in his deposition that he disposed of the computers that he allegedly used to create the "guitar twang sequence" and he was less than forthcoming with his explanation as to its whereabouts. (Dickie Decl. ¶ 16.) Defendants Riesterer, Guetta and Adams, the alleged creators of "I Gotta Feeling," admitted in their depositions that they never searched for responsive documents or communications, except for Adams' claim that he checked "a couple of days" before his deposition (which was 4 months after he was served with his requests and 3 months after "he" served his discovery responses). (Dickie Decl. ¶ 18, Ex. E, F, G.)

Contrary to Defendants' representations, Plaintiff has repeatedly and consistently disputed Defendants' baseless contentions and provided ample evidence proving that these contentions are false. Defendants nonetheless wish to file this baseless motion. The motion should be denied for the reasons discussed more fully below.

A. Defendants' Points And Authorities On Standards On Motion To Compel

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense — including the existence, description,

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nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter." Fed. R. Civ. P.26 (b)(1).

When moving to compel discovery responses, the moving party must demonstrate the prejudice from denial of recovery. *See e.g. In re Sulfuric Acid Antitrust Litig*. 231 F.R.D. 331, 333 (N.D. Il. 2005). The district court considers factors including timeliness, good cause, utility and materiality. *CSC Holdings, Inc. v. Redisi,* 309 F. 3d 988 992 (7th Cir. 2002).

If objections are made to discovery requests, the party asserting the objections bears the burden of justifying them. *Blankenship v. Hearst Corp.,* 519 F.2d 418, 429 (9th Cir.1975).

As set forth in greater below, Defendants will be prejudiced if Plaintiff is not required to respond to the interrogatories at issue in this Motion, as the interrogatories are targeted at uncovering evidence regarding key issues in this case: e.g., when, how and whether Plaintiff created his work, whether that work was original, and whether Plaintiff had access to – and indeed copied – The Black Eyed Peas' work for purposes of bringing a sham lawsuit. Further, as demonstrated by Plaintiff's testimony and responses, the contents of the hard drive disposed of by Plaintiff are relevant to exposing that charade, disposing of Plaintiff's copyright claim and establishing Defendants' defenses.

B. Plaintiff's Points and Authorities on Standards On Motion To Compel

A party may only obtain discovery regarding "any nonprovileged matter that is relevant to [the] party's claim or defense." Fed.R.Civ.P. 26(b)(1), *Sierrapine v. Refiner Products Mfg. Inc.,* 275 F.R.D. 604 (E.D. Cal. 2011). As the Advisory Committee Notes to the 2000 Amendment to Fed.R.Civ.P. 26(b)(1) indicate, courts must "focus on the **actual claims and defenses involved in the action**." *Id*. Courts may not permit a party to "go on a fishing expedition to try to find evidence for a

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claim that is pure conjecture." *Finneman v. U.S. Dept. of Transp.,* 1994 WL 172253 (N.D. Cal. Apr. 7, 1994) *affd*, 74 F.3d 1245 (9th Cir. 1996).

Requests for "any and all" information about an issue that are not germane to [a] case are generally deemed vague, overbroad and unduly burdensome. *See eg. Superior Communications v. Earhugger, Inc.*, 257 F.R.D. 215, 220 (C.D. Cal. 2009)("[the] requests seek information about all of defendant's products, not just the "Accused Products"… thus, the requests are vague and unduly burdensome and must be limited to the "Accused Products"…)

Requests that are neither limited in time nor scope are generally deemed overly broad and unduly burdensome. *See eg. Fisher v. Felker,* 2011 WL 39124 (E.D. Cal. Jan. 5, 2011)("Plaintiff's request is neither limited in time or scope nor reasonably calculated to lead to the discovery of admissible evidence…[a]s a result the request is overbroad and unduly burdensome."); *Miskam v. McAllister,* 2011 WL 94698 (E.D. Cal. Jan. 11, 2011).

Similarly, requests that use omnibus terms like "any and all" or "each and every," or requests that seek "all" information "referring to," "relating to" or "pertaining to" a general category of items are often deemed unduly burdensome on their face. *See eg. Echostar Satellite LLC v. Freetech, Inc.*,2009 WL 8398695 (N.D. Cal. May 18, 2009)(Discovery request that sought information "referring to" a general category of items was deemed overly broad on its face); *Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533 (D. Kan. 2003)("[a] request may be deemed overly broad on its face when it uses the term "regarding," "relating to," or "pertaining to" with respect to a broad category of documents."); *Moss v. Blue Cross and Blue Shield of Kansas, Inc.*, 241 F.R.D. 683 (D. Kan. 2007)("[T]he court finds that requested defendant to supply plaintiff with all correspondence of any kind… is overly broad on its face.")

Defendants have made a number of reckless and wildly speculative allegations without providing a stitch of evidence relating to same. In order to

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buttress these allegations, Defendants' claim that Plaintiff's discovery responses, which flatly contradict these allegations, are objectionable and insufficient.

Each of Plaintiff's objections is proper and each of Plaintiff's responses is complete. This motion is nothing more than an attempt to distract from the obviousness of Defendants' infringement and needlessly increase the cost of litigation for the Plaintiff. This dilatory and obstructionist motive is best evidenced by two painfully hypocritical positions that Defendants have taken.

First, Defendants have consistently and repeated relied upon general boilerplate objections. Defendants Ferguson, Adams, Gomez, Headphone Junky, LLC, UMG, Interscope, Riesterer and Cherry River have each stated and relied upon general boilerplate objections in response to discovery requests served upon them. They are therefore judicially estopped from moving to strike these same objections. *See eg. Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) ("Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position and then later seeking an advantage by taking a clearly inconsistent position.").

Second, Defendants object to the fact that Plaintiff's "investigation continues." Defendants are the sole reason that Plaintiff's "investigation" is far from over however. Defendants have consistently and repeatedly refused to produce responsive documents and respond to interrogatories that bear directly on issues of consequence in this case.

Defendant Riesterer's deposition was taken 3 months after he was served with discovery requests and 2 months after he purportedly responded. He nonetheless testified that he was not aware that Plaintiff had asked him for communications relating to the creation of "I Gotta Feeling." (Dickie Decl. Ex. E at pp. 212, 213.) He further testified that he did not conduct any search for any responsive documents:

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> I'm not going to go and look for things. Once again, I haven't done anything. Why would I establish evidence to prove anything ahead of time.

(*Id*. at 213:10-14).

Defendant Guetta's deposition was taken 6 months after he was served with discovery requests. He testified that he never searched his records for any documents related to the allegations in the lawsuit. (Dickie Decl. Ex. F at pp. 76, 77.)

Defendant Adams' deposition was taken 4 months after he was served with discovery requests and 3 months after he purportedly responded. He nonetheless testified that he first searched for responsive documents "a couple of days" before his deposition. (Dickie Decl. Ex. F at p. 65.)

This continued obstructionist practice, coupled with Defendants' policy of affixing an "Attorneys' Eyes Only" designation on virtually every document they produce, has inhibited Plaintiff from conducting meaningful discovery.

C. Plaintiff's Boilerplate "Privilege" Objections Should Be Disregarded

As a preliminary matter, Plaintiff asserted general boilerplate objections, including blanket objections to all interrogatories on the grounds of attorney client privilege and attorney work product. (Pink Decl. ¶13, Exhibit 9.) "Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all." *Walker v. Lakewood Condominium Owners Assoc.*, 186 F.R.D. 584, 587 (C.D.Cal.1999).

Despite meet and confer efforts, Plaintiff provided no support for the "privilege" objections and did not respond to Defendants' requests for a privilege /log. (Pink Decl. ¶15.) As a matter of well established law, Plaintiff must identify which interrogatories call for privileged information, and provide a privilege log specifically relating thereto. Short of that, these objections should be stricken.

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Plaintiff's remaining objections and responses also are deficient. Those interrogatories are addressed by category of relevance as follows:

Plaintiff's Contentions With Respect To This Proposition

As discussed above, Defendants are estopped from asserting this position in light of their prior reliance on boilerplate objections, including privilege objections. Defendants have also failed to provide a privilege log specifically relating to their objections. Plaintiff's specific contentions will be addressed more fully below.

D. Interrogatories Propounded By Headphone Junkie Publishing, LLC Related To When and How Plaintiff Created His Work, Plaintiff's Access to Defendants' Works, and the Discarded Hard Drive

Interrogatory No. 1

Identify each and every song of The Black Eyed Peas Plaintiff Bryan Pringle has sampled and state with particularity where Plaintiff obtained the sound recording to sample.

Answer to Interrogatory No. 1

Objection. Plaintiff objects to Interrogatory No. 1 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, in so far as, the Plaintiff understands the question, none. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 1

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad and unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections. *See Mitchell v. National R.R. Passenger Corp.*, 208 F.R.D. 455, 458 n.4 (D. D.C. 2002).

The relevancy objection is also meritless. Plaintiff's access to Defendants' works is relevant with respect to the defense of the underlying claim, and thus the question posed is reasonably calculated to the discovery of admissible evidence in

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support of that defense. Certainly, Plaintiff has failed to show that this is not so. As the party asserting objections, Plaintiff has the burden to support the objections. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.1975). Plaintiff cannot do so.

ii. The Response Is Incomplete

Plaintiff includes in his response that "investigation continues" and yet responds with "none." Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B). When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2); *see DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 689 (D. Kan 2004) ('"discovery is ongoing' is not a valid objection"); *see e.g., B. Braun Med. Inc. v. Abbot Laboratories,*155 F.R.D. 525, 527 (E.D. PA 1994). Plaintiff has failed to do so.

Defendants are entitled to a full and complete response. If the response is "none" it should be given in an unqualified manner. If there is more information available to Plaintiff, it must be provided. If Plaintiff discovers additional facts during the course of litigation, he has a duty to supplement his response pursuant to Fed. R. Civ. P. 26 (e)(2). To this end, the statement that "Investigation continues" adds nothing. Plaintiff cannot skirt his obligation to timely provide a substantive, factual response by nebulously suggesting that he may discover supporting facts sometime in the future. This is especially so because non-expert discovery is now closed in this case. The time is up: if Plaintiff cannot factually and substantively answer this interrogatory, he must say so.

Plaintiff's Contentions Regarding Interrogatory No. 1

i. The Objections Have Merit

Defendants' first contention is but the first example of the absurdity of their motion. In this interrogatory they ask Plaintiff to identify "each and every song" of

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the Black Eyed Peas that Plaintiff has "sampled."

First, by Defendants' own admission, their request for each and every song that Plaintiff has "sampled" is vague and overly broad. During Defendant Adams' deposition, he was asked to explain what the word "sampling" meant to him as it was used in the music industry. (Dickie Decl. Ex. G at p. 90.) His counsel, Ms. Cenar, objected to the question on the grounds that it was allegedly "vague". *Id*. When asked to explain the basis of her objection so that Plaintiff's counsel could rephrase the question, Mr. Adams' counsel refused, stating only that the objection was "for the record." *Id*. at 91. Seemingly on cue, Mr. Adams then answered:

> "Sampling," it differs. It all—like I said, in every genre of music it—it's a different definition.

Id. Defendants cannot seriously dispute the vagueness of this Interrogatory.

Second, Defendants' request for an identification of "each and every song" of the Black Eyed Peas that Plaintiff has ever sampled is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is no way limited in time or scope. *Fisher, supra,* 2011 WL 39124 at * 2. The issue in this case is whether the Defendants' copied Plaintiff's song "Take a Dive." Defendants now attempt to manufacture a defense by claiming, contrary to the established facts and the scientifically accepted limits of the time-space continuum, that Plaintiff sampled "I Gotta Feeling" when he created "Take a Dive" in 1999. Whether or not Plaintiff sampled any other songs of the Black Eyed Peas at any time in history does not bear on any issue in this case and it is undoubtedly overbroad and unduly burdensome. *Fisher, supra,* 2011 WL 39124 at * 2, *Superior Communications,* 257 F.R.D. at 220.

Defendants' alleged contention with regard to these objections is especially interesting given that, in Defendant Headphone Junky, LLC's responses to Plaintiff's discovery requests, she objected and refused to respond on the grounds of relevance, overbreadth, and privilege, among others, to Plaintiff's request for

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documents relating to other allegations of infringement made against the Black Eyed Peas. She did so even though Plaintiff's complaint contains specific allegations relating to third party accusations of copying and a pattern and practice of infringement and even though this Court denied Defendants' motion to strike those allegations. (See Dckt. No. 95, Order Dated January 27, 2011). Defendants are therefore judicially estopped from moving to strike these objections in these circumstances. *Hamilton, supra*, 270 F.3d at 782.

ii. The Response Is Complete

Plaintiff's response is unequivocal and complete. Without waiving his objections, he denies sampling Black Eyed Peas music. Defendants had an opportunity to and did in fact explore this issue during his deposition.

Further, as described above, Defendants are the very reason that Plaintiff's "investigation continues." Defendants have consistently and repeatedly refused to produce responsive documents and respond to interrogatories that bear directly on issues of consequence in this case.

Interrogatory No. 2

Identify each and every song of The Black Eyed Peas Plaintiff Bryan Pringle has downloaded and state with particularity where Plaintiff obtained the sound recording to download.

Answer to Interrogatory No. 2

Objection. Plaintiff objects to Interrogatory No. 2 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, to the best of his recollection, Plaintiff states that he purchased "The E.N.D." album, "The Beginning" album, multiple versions of "I Gotta Feeling"; and "Don't Phunk With My Heart." Plaintiff further states that, to the best of his recollection, these and other songs were either purchased on www.amazon.com or elsewhere, but he doesn't specifically recall exactly what

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songs were specifically purchased and exactly where they were purchased. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 2

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad and unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections. *Blankenship*, 519 F.2d at 429 (party resisting discovery bears burden); *Mitchell*, 208 F.R.D. at 458 n.4.

The relevancy objection is also meritless. Plaintiff's access to Defendants' works is relevant with respect to the defense of the underlying claim, and thus the question posed is reasonably calculated to the discovery of admissible evidence in support of that defense. Certainly, Plaintiff has failed to show that this is not so. Thus, Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429.

ii. The Response Is Incomplete

Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B). When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. If Plaintiff discovers additional facts during the course of litigation, he has a duty to supplement his response pursuant to Fed. R. Civ. P. 26 (e)(2). To this end, the statement that "Investigation continues" adds nothing. Plaintiff cannot skirt his obligation to timely provide a substantive, factual response by nebulously suggesting that he may discover supporting facts sometime in the future. This is especially so because non-expert discovery is now closed in this case. The time is up: if Plaintiff cannot

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factually and substantively answer this interrogatory, he must say so.

Further, aside from the improper qualifier, the substance of the response is incomplete. Plaintiff does not identify what songs he obtained and where he obtained them from.

Plaintiff also refers to "multiple versions of I Gotta Feeling" in his response, but he fails to identify where he obtained such versions. If Plaintiff cannot recall because the computer hard drive was destroyed, then Plaintiff should be ordered to state that in the interrogatory.

Plaintiff also states he: "either purchased on www.amazon.com ***or elsewhere***, ***but he doesn't specifically recall exactly what songs were specifically purchased and exactly where they were purchased."*** Plaintiff should be ordered to list all places where he purchased The Black Eyed Peas' song "I Gotta Feeling." If Plaintiff cannot recall because the computer hard drive was destroyed, then Plaintiff should be ordered to state that in the interrogatory. If the songs are included on the discs Plaintiff gave to his counsel, he must supplement the response after reviewing the data to indicate what specific songs he purchased.

Because Plaintiff's access to Defendants' works (which were widely available both in their complete form and in their constituent elements – including the isolated guitar twang sequence) is critical to the claim, Plaintiff must be required to state in detail how, when and where he downloaded The Black Eyed Peas' songs and any constituent part thereof.

Plaintiff's Contentions Regarding Interrogatory No. 2

i. The Objections Have Merit

Defendants' request for "each and every song" of the Black Eyed Peas that Plaintiff has ever downloaded is unduly burdensome on its face. *Echostar Satellite, supra*. It also seeks information relating to songs that are not germane to this case. *Superior Communications, supra.*

ii. The Response Is Complete

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Without waiving his objections, Plaintiff specifically identifies to the best of his recollection the Black Eyed Peas' albums and songs that he has purchased in his lifetime. He also identifies, to the best of his recollection, from where he downloaded those songs. Defendants' objection to this response is baseless.

Interrogatory No. 3

Identify with specificity where Plaintiff Bryan Pringle obtained a copy of The Black Eyed Peas' acapella for the song I Gotta Feeling and when it was obtained.

Answer to Interrogatory No. 3

Objection. Plaintiff objects to Interrogatory No. 3 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, Plaintiff states that to the best of his recollection at this time, he used a remixed version of "I Gotta Feeling" with less instrumentation and "EQ'ed" the instrumentation out of the song, to the best of his ability, to make the vocals more easily heard.

Defendants' Contentions Regarding Interrogatory No. 3

The acapella version of The Black Eyed Peas song being referred to in this interrogatory relates to the DRDR313 and Broadjam sites mentioned above in footnote 4. A simple listening of this vocal track proves that it is different than that which Plaintiff could have obtained by purchasing The Black Eyed Peas' CD, The E.N.D. Not only does the special nature of the vocal track used by Plaintiff entirely impeach Plaintiff's response to this interrogatory, but it highlights the necessity for a Court Order requiring Plaintiff to answer this interrogatory. Where and when Plaintiff obtained this acapella version is directly connected to where Plaintiff obtained the guitar twang sequence at issue in this case. Plaintiff should therefore be required to identify specifically where and when he obtained the "I Gotta Feeling" acapella.

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. Plaintiff

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reasserts the same boilerplate, unsupported objections.

There is nothing overly broad and unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections.

The relevancy objection is also meritless. The case involves a copyright claim. Plaintiff's access to Defendants' works is at issue and could lead to admissible evidence to support their defense. Plaintiff simply cannot meet his burden of supporting these objections. *DirectTV, Inc. v. Trone,* 209 F.R.D. 455, 458 (C.D.Cal.2002) (citing *Blankenship, supra,* 519 F.2d at 429).

ii. The Response is Incomplete

Plaintiff has not responded to the questions posed in the interrogatory. Plaintiff ***does not identify where he obtained a copy of the song and when***. Defendants are entitled to a full and complete response, as access to each other's works is central.

Further, Plaintiff references a "remixed" version but does not provide any further details to identify or explain what the remixed version is, where he obtained it and when. He also fails to state whether the remixed version was downloaded and stored on the hard drive he conveniently discarded in a landfill, or whether the data is on the discs Plaintiff provided to his counsel. Plaintiff must provide all information "available" to him. Fed. R. Civ. P. 33 (b)(1)(B). If the information was discarded, Plaintiff must indicate as much.

Plaintiff's Contentions Regarding Interrogatory No. 3

i. The Objections Have Merit

Defendants' objections to Plaintiff's response are yet another example of the Defendants' inability to accept that the truth belies their manufactured defense to this case. As detailed above and overwhelmingly supported by the evidence, Plaintiff created the "guitar twang sequence" at issue in this case in 1999. The request for information relating to Plaintiff's acquisition of the song that infringed upon his copyright more than 10 years later is not relevant to any issue in this case.

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The interrogatory is also vague and overly broad since it refers to "The Black Eyed Peas' acapella for the song "I Gotta Feeling," without referencing what they mean and to what they refer when they use the term "acapella."

ii. The Response Is Complete

As stated in Plaintiff's response, to the best of his recollection he used a remixed version of "I Gotta Feeling" with less instrumentation and "EQ'ed" the instrumentation out of the song." Plaintiff's response more than answers the Interrogatory which was based on the incorrect premise that Plaintiff "obtained" an "acapella" version of "I Gotta Feeling." The additional information that Defendants now seek, is not even requested in the Interrogatory, but even so was explained in great detail during Plaintiff's deposition. (Dickie Decl. Ex. H pp. 183 – 186).

Interrogatory No. 4

Identify with specificity where Plaintiff Bryan Pringle obtained a copy of the guitar twang sequence present in The Black Eyed Peas' song I Gotta Feeling and when it was obtained.

Answer to Interrogatory No. 4

Objection. Plaintiff created the guitar twang sequence present in his song "Take a Dive," in or around 1999; Plaintiff did not obtain a copy of the guitar twang sequence in the BEPs' song "I Gotta Feeling."

Defendants' Contentions Regarding Interrogatory No. 4

Plaintiff states he has an "objection" but never identifies an objection, thus waiving it. Fed. R. Civ. P. 33 (b)(4); *see e.g., Nagele v. Electronic Data Systems Corp.,* 193 F.R.D. 94, 109 (W.D. NY 2000).

Further, Plaintiff does not describe with any specificity how he supposedly created the guitar twang sequence. To date, Plaintiff has not provided any documents evidencing he has created the sequence. If such documents exist, they should have been provided and Plaintiff should, at a minimum, have referenced these documents in his response and reviewed them in order to provide the

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necessary specificity to provide a full and complete response.

It is also unclear whether evidence of the creation was stored on the hard drive Plaintiff discarded in a landfill. Plaintiff must provide all information "available" to him. Fed. R. Civ. P. 33 (b)(1)(B). If the information was discarded, Plaintiff must indicate as much.

Plaintiff's Contentions Regarding Interrogatory No. 4

Plaintiff did not obtain a "copy of the guitar twang sequence present in the Black Eyed Peas' song "I Gotta Feeling." He cannot therefore respond to an interrogatory that asks from where and when he "obtained" such a copy.

Although Plaintiff's response to this Interrogatory is therefore complete, Though not requested in this Interrogatory, Plaintiff has explained repeatedly and consistently, both in discovery responses and in his deposition testimony, precisely how he created the "guitar twang sequence" in 1999. Plaintiff did so most recently in his Amended Response to Defendant Ferguson's Interrogatories, No. 2:

> Plaintiff states that he used an Ensoniq ASR-10, 16 track midi sequencer, sampler and workstation, with a built in effects processor, floppy drive, with an expandable 16 mb ram and optional SCSI port for storage to compatible hard drives. Plaintiff had the optional digital I/O port, the fully expanded (16) mb ram, the SCSI port, with multiple compatible hard drives, and other compatible cd-rom drives, as well as a Sony multi-cd player with a digital I/O port (for sampling instrumentation and effects from licensed sources such as instrumental construction disks from third party vendors). Instruments would either be loaded into the ASR-10 via floppy drive, cd-rom and hard drive, or sampled into the ASR-10, via the digital I/O port or sampled from an external audio source such as one of the many different midi keyboards that he used, including but not limited to, Akai, Korg, Yamaha, Roland, Kurzweil, Emu, and Ensoniq, or custom instruments would be created and then individual wavesamples would be loaded into the custom created instruments via cd-rom, hard drive, or floppy drive. Plaintiff

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also used an Audio Technica microphone, rackmount compressor, and rackmount Digitech effects processor, as well as other unknown equipment.

Defendants claim that Plaintiff has not provided this information is simply not true. Defendants object to the answer because they simply do not like it. But that is not grounds for a motion to compel.

Interrogatory No. 16

Identify the date, time and reason for discarding any documents relevant to any allegation of the complaint.

Answer to Interrogatory No. 16

Objection. Plaintiff objects to Interrogatory No. 16 because it is overly broad, unduly burdensome and vague. Without waiving said objection, Plaintiff states that the written communication from Gum Productions in or around 2001 to 2003, acknowledging receipt of his music, was discarded prior to the release of "I Gotta Feeling," as several years had passed since its receipt and Plaintiff believed he no longer needed it.

Defendants' Contentions Regarding Interrogatory No. 16

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad, unduly burdensome or vague about the request. Plaintiff has failed to identify or attempt to clarify any alleged vagueness. Plaintiff has also failed to provide a meaningful basis for the overbroad and burdensome objection as required. Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response Is Incomplete

Plaintiff's response is incomplete and fails to set forth the date, time and reason for discarding any documents relevant to any allegation of the complaint. Remarkably, Plaintiff also fails to identify the hard drive he disposed of in the

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middle of this litigation. He testified at deposition that that hard drive contained numerous files during the relevant 2010 time period. (Pink Decl., ¶ 11, Exhibit 7.)

Obviously Plaintiff's failure to provide any reference to the destroyed hard drive in response to this interrogatory is a glaring and sanctionable omission. Plaintiff's counsel had an obligation to identify destroyed hard drives during the initial discovery scheduling conference. *See Keithley v. Homestore.com, Inc.*, 629 F. Supp. 2d 972, 977 (N.D. Cal. 2008) (duty to candidly inform Court and opposing counsel about spoliation).

Not only did Plaintiff fail to identify the destroyed hard drives then, but Plaintiff's counsel refused to hold any discussions at all regarding ESI. (*See* Pink Decl. ¶¶ 6-7, Exhibit 3.) Plaintiff must be compelled to respond and identify what documents, including ESI, that he intentionally and with full knowledge of this litigation (and the hard drive's significance to it) disposed of.

i. The Objections Have Merit

Defendants' request that Plaintiff identify the "date, time and reason" for the alleged discarding of "any documents" relevant to "any allegation" of the complaint is, by definition, vague, overbroad, and unduly burdensome for the same reasons described above. It is in no way limited in time or scope and the objections therefore are proper. *Fisher v. Felker,* 2011 WL 39124 (E.D. Cal. Jan. 5, 2011)

ii. The Responses Are Complete

Notwithstanding his objections, Plaintiff identifies in his response the written communication that he received from Gum Productions in or around 2001 to 2003 in which Gum Productions acknowledged receipt of "Take a Dive". Plaintiff described this communication during his deposition. (Dickie Decl. Ex. H pp.88-90.) To his best recollection, Plaintiff has not otherwise disposed of any document that is "relevant to any allegation of the complaint."

The hard drive referred to in Defendants' contentions is not "relevant to any allegation of the complaint." Plaintiff alleges in his complaint that Defendants

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copied his song "Take a Dive" when they created "I Gotta Feeling." Plaintiff created "Take a Dive" in August 1999. *Id.* at ¶ 4. Plaintiff took significant and considerable steps to preserve the evidence of his creation by preserving copies of the hard drive that he used during that time period. *Id.* at ¶ 5. Plaintiff has made this information available to Defendants. *Id.* at ¶ 11.

Defendants' insistence that a hard drive that was purchased in 2010 is somehow relevant is based only on wild speculation and most certainly is not "relevant to any allegations of the complaint." For that reason alone, Plaintiff did not identify this hard drive in its discovery response. Defendants object to the answer because they simply do not like it, but that is not grounds for a motion to compel.

As explained in Plaintiff's counsel's letter dated October 31, 2011, the 2011 hard drive crashed. *Id.* at Ex. B. As is his habit, Plaintiff backed up the contents on the hard drive prior to it crashing and placed this backup in the possession of a forensic expert. Defendants have been given the opportunity to inspect these contents.

Defendants' claim that they have somehow been denied the opportunity to discover relevant evidence is without merit. Plaintiff has, at the very least, adequately responded to this Interrogatory.

Defendants' position is especially curious given Defendants' failure to permit discovery and Defendant Riesterer's admission that he improperly disposed of the computers that he allegedly used to create "I Gotta Feeling." (Dickie. Decl. at Ex. E)

> Q. Do you still have this computer?
>
> A. No.

(*Id*. at pp. 192, 193)

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Q. Where is it now?

A. I gave it to a friend.

Q. Which friend did you give it to?

A. I don't remember. I have a lot of friends.

(*Id*. at p. 193).

Q. But what about all of the sounds that you saved on the computer, do you still have those?

A. I made a lot of backups…

Q. Okay. So then you say you made a lot of backups, where did you, on what type of device did you save these backups?

A. On hard disks, external hard drives, first of all, internal hard drive and then external hard drives.

Q. And do you still have these backup copies of the sounds that you had on that original computer?

A. Of course.

Q. And are these backups in France?

A. Yes.

(*Id*. at p. 194)

Interrogatory No. 17

State with particularity what files exist on the incorrect NRG file produced in this case, and describe how the files were created, dated and imaged on the incorrect NRG file.

Answer to Interrogatory No. 17

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Objection. Plaintiff objects to Interrogatory No. 17 because it is overly broad, unduly burdensome and vague. Without waiving said objection, Plaintiff states that what he understands is being referenced, as the "incorrect NRG file," to the best of his recollection, was created, dated and imaged sometime around 1999 with Ensoniq Disk Manager, on a Windows 98 based computer, with a cd-rom burner. The actual files contained inside of what he understands is being referenced as the "incorrect NRG file" were actually created on an Ensoniq ASR-10 Keyboard through the various manipulation functionality of the Ensoniq ASR-10. The following files are what is actually contained to the best of his knowledge, in the aforementioned and referenced "incorrect NRG file":

DIR 1
"1952" - SONG - (NAMED AS "STRANDED") - FILE 19
SONG BANK - "STRNDED BK" - FILE 10
BANK EFFECT - VOICE REVERB - FILE 9
Track 1 - S DRUMS - FILE 12
Track 2 - EMPTY - NO INSTRUMENT
Track 3 - VOX SMPL GTR - FILE 3
Track 4 - S-MAGIC GTR - FILE 4
Track 5 - STRING INST - FILE 5
Track 6 - GOOBER SMPL - FILE 6
Track 7 - SIRENS SMPL - FILE 7
Track 8 - NIRVANA INST - FILE 8
DIR 2 - Empty - NO INSTRUMENTS OR SONGS
DIR 3 - Empty - NO INSTRUMENTS OR SONGS
DIR 4 - Empty - NO INSTRUMENTS OR SONGS
DIR 5
"UNTIL THE END OF TIME" - SONG - (NAMED AS "TIME, - FILE 10
SONG BANK - "TIME BANK" - FILE 4 * (WILL NOT LOAD BANK)
BANK EFFECT - VOICE REVERB - FILE 13
Track 1 - T DRUMS - FILE 12
Track 2 - EMPTY - NO INSTRUMENT
Track 3 - SIRENS INST - FILE 18
Track 4 - AHHS* - FILE 22
Track 5 - SLAPBASS - FILE 5
Track 6 - GTR FX* INST - FILE 19
Track 7 - STRING SMPL - FILE 6
Track 8 - NRVNA SMPL - FILE 17
DIR 6 - Empty - NO INSTRUMENTS OR SONGS
DIR 7
"TAKE A DIVE"- SONG - (NAMED AS "DIVE, - FILE 18

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SONG BANK - “D BANK” - FILE 16 * (WILL NOT LOAD BANK)
BANK EFFECT - (THIS BANK EFFECT MUST BE SET TO “FX-ROM-04 - DUAL
DELAYS”- USE “FX SELECT” BUTTON & SCROLL TO “DUAL DELAYS” - ”VAR 1”
“STEREO BOUNCE”)
Track 1 - D DRUMS - FILE 19
Track 2 - OOHS - FILE 17
Track 3 - KICK BASS - FILE 3
Track 4 - SIRENS INST - FILE 4
Track 5 - COSMO SYNTH - FILE 5
Track 6 - DELAY SMPL - FILE 6
Track 7 - SFX INST - FILE 7
Track 8 - DEMO SYNTH - FILE 8

DIR 8

“BROKEN WING” - SONG (NAMED AS “BRKN WING”) - FILE 16

SONG BANK - “BRKN WG BNK” - FILE 1
BANK EFFECT - (THIS BANK EFFECT MUST BE SET TO “FX-ROM-01 - HALL
REVERB”- - “VAR 4” - “LONG REVERB”) THIS EFFECT WILL LOAD WITH THE “BRKN
WG BNK”.
Track 1 - N DRUMS - FILE 2
Track 2 - DEEP BASS - FILE 3
Track 3 - DIGISMPL - FILE 4
Track 4 - SIRENS INST - FILE 5
Track 5 - PAN BASS - FILE 6
Track 6 - FLUTE SMPL - FILE 7
Track 7 - SUPER HITS - FILE 8
Track 8 - HI BASS SMPL - FILE 9

DIR 9

“7 SECONDS TO HEARTBREAK” - SONG (NAMED AS “HEARTBREAK”) - FILE 15

SONG BANK - “H BANK” - FILE 16 * (WILL NOT LOAD BANK)
BANK EFFECT - VOICE REVERB - FILE 10
Track 1 - DRUMS - FILE 1
Track 2 - VOICE INST - FILE 3
Track 3 - FX BASS SMPL - FILE 20
Track 4 - SYNTHSTRINGS - FILE 4
Track 5 - CLEANGTR SMP - FILE 21
Track 6 - RICH PADS - FILE 6
Track 7 - ACST STRING1 - FILE 2
Track 8 - GTR LINE SMP - FILE 9

DIR 10

“TOO YOUNG TO DROWN” - SONG (NAMED AS “YOUNG”) - FILE 8

SONG BANK - “YNG BANK” - FILE 10 * (WILL NOT LOAD BANK)
BANK EFFECT - VOICE REVERB - FILE 9

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Track 1 - DRUMS - FILE 1
Track 2 - FLNGED BASS - FILE 2
Track 3 - FX* INST - FILE 3
Track 4 - EMPTY - NO INSTRUMENT
Track 5 - WIRE JUPITER - FILE 4
Track 6 - HRSH GTR - FILE 6
Track 7 - ALIEN SYNTH - FILE 6
Track 8 - VOCO SMPL* - FILE 7

Defendants' Contentions Regarding Interrogatory No. 17

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad, unduly burdensome or vague about the request. Plaintiff has failed to identify or attempt to clarify any alleged vagueness. Plaintiff has also failed to provide a meaningful basis for the overbroad and burdensome objection as required. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458. Plaintiff cannot meet his burden of supporting these meritless objections.

ii. The Response Is Incomplete

Plaintiff's response is incomplete in several respects. Plaintiff has failed to state *how* the files were created, *how* the files were dated and *how* the files were imaged. Indeed simply indicating the files were created, dated and imaged "somewhere around 1999" is not responsive or sufficient, as Plaintiff has the ability to determine when the files were created, accessed and modified. Because he allegedly created the files, he should know *how* they were dated, created and imaged.

Plaintiff must provide how the file for each song was created. The issues of creation, originality and protectability are central to this case.

Further, to the extent the interrogatory calls for information that was on the hard drive Plaintiff discarded, Plaintiff should be required to supplement the response to indicate precisely what information responsive to this interrogatory was on those drives.

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Plaintiff's Contentions Regarding Interrogatory No. 17

i. The Objections Have Merit

Defendants' reference to an "incorrect NRG file" and their request for a description about "how" certain music files were created, dated and imaged is overly broad and vague. Their request for a description of how these files were created, dated and imaged is unduly burdensome, especially in light of the fact that many of the files referenced bear no relevance to any issue in this case. Plaintiff's objections are proper.

ii. The Response Is Complete

It is unclear how Defendants expect Plaintiff to explain "how" he created close to 100 music files in an interrogatory response. Nonetheless, Plaintiff endeavored to provide responsive information in his response. He also testified at length about this issue during his deposition. (Dickie Decl. Ex. H at pp. 241-270.) Defendants object to the answer because they simply do not like it, but that is not grounds for a motion to compel.

Interrogatory No. 18

State with particularity how the deposit copy for the copyright application for the Take A Dive (Dance Version) sound recording was made, including the individual that made the deposit copy, the date the deposit copy was made, and equipment used to make the deposit copy, and the settings made on the equipment.

Answer to Interrogatory No. 18

Objection. Plaintiff objects to Interrogatory No. 18 because it is overly broad, unduly burdensome and vague. Without waiving said objections, Plaintiff states that he believes an mp3 copy was uploaded through the U.S. Copyright Office website on or around November of 2010. Plaintiff further states that the mp3 that was uploaded was either created from his having accessed the "correct NRG file" and uploaded its contents onto an ASR-10 keyboard and recorded the tracks into his Windows based computer, using a program called Cubase SX, and subsequently

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converted the track to mp3 for submission to the Copyright Office; alternatively, an older copy of "Take A Dive" in mp3 or wave format was simply converted the mp3 to a different bit rate for upload.

Defendants' Contentions Regarding Interrogatory No. 18

i. The Objections Are Meritless

Plaintiff reasserts the same boilerplate objections. There is nothing overly broad, unduly burdensome or vague about the request. Plaintiff has failed to identify or attempt to clarify any alleged vagueness. Plaintiff has also failed to provide a meaningful basis for the overbroad and burdensome objection as required. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458. Plaintiff cannot meet his burden of supporting these objections.[6]

ii. The Response Is Incomplete

Plaintiff's response is incomplete and evasive. Plaintiff has not provided any information in the response as to *how* the deposit copy was made, including what was required to call up the various tracks and how he accomplished this. He does not specify what his belief is based on, nor does he provide any factual support for his belief or explain why he unable to identify which method he used to make the deposit copy.

To the extent the underlying information was destroyed or is no longer in Plaintiff's possession, or was discarded on the hard drive he dumped mid-litigation, Plaintiff should be required to supplement his discovery response to indicate as much.

Plaintiff's Contentions Regarding Interrogatory No. 18

i. The Objection Has Merit

Defendants request that Plaintiff "state with particularity" how a sound

[6] As noted above, this case was principally founded on the purported "sampling" of Plaintiff's sound recording, "Take a Dive" (Dance Version). While Plaintiff has made an eleventh hour about-face on this claim, it presently remains part of this lawsuit.

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recording was "made," including the existing "settings" made on the equipment, is overly broad, unduly burdensome and vague.

Ironically, when Plaintiff asked Defendant Adams to identify "the Documents, ESI, and Electronic Storage Devices used to create "I Gotta Feeling," he responded by incorporating "each of the general objections" provided with his responses and further objected on the grounds that the interrogatory was "vague and ambiguous, compound, and calls for information that is not relevant to element of proof that Plaintiff is required to establish in prosecuting his single claim for copyright infringement." See Defendants Adams' Response to Interrogatory No. 3. Defendant Adams then refused to answer the interrogatory. His counsel cannot seriously now move to strike a similar objection to a more nebulous request.

ii. The Response is Complete

Plaintiff explained how he made the deposit copy and he described the equipment that he used. His response to the Interrogatory was complete. He also described the process during his deposition. (Dickie Decl. Ex. H at pp 262-264.) Defendants object to the answer because they simply do not like it, but that is not grounds for a motion to compel.

Interrogatory No. 19

Provide each and every creation date, access date and modified date for the "correct" NRG file.

Answer to Interrogatory No. 19

Objection. Plaintiff objects to Interrogatory No. 19 because it is overly broad, unduly burdensome, and to the extent it seeks a legal conclusion. Without waiving said objections, Plaintiff states that, pursuant to the forensic analysis conducted by David Gallant, the creation date for the file named "DISK05.NRG," which contains "Take a Dive (Dance Version)," is August 22, 1999, with a last modified time of 12:54 p.m.

Defendants' Contentions Regarding Interrogatory No. 19

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i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad or unduly burdensome about the request and Plaintiff has failed to provide a meaningful basis for these objections.

The "calls for a legal conclusion" objection is also meritless. A party may be required to state its contentions relating to "fact or the application of law to fact." Fed. R. Civ. P. 33 (a)(2). Plaintiff cannot meet his burden of supporting these objections. *Blankenship,* 519 F.2d at 429; *DirectTV,* 209 F.R.D. at 458.

ii. The Response Is Incomplete

This request requires information as to Plaintiff's knowledge of every creation date, access date and modified date for the correct NRG file. Plaintiff has steadfastly failed to respond to this inquiry, and tellingly, has failed to provide ***his*** knowledge as to the creation, access and modified dates. Plaintiff is the individual claiming to have allegedly created the files on the NRG disc, as well as the NRG image, and has been the only one allegedly with access. Thus, Plaintiff is the only individual with this alleged knowledge, and this interrogatory directly seeks his knowledge. Plaintiff wholly fails to provide an adequate response.

Instead, Plaintiff refers to an alleged creation date for "DISK05.NRG" and its last modified **time**, *as allegedly determined by an outside paid computer consultant.* Plaintiff, not the computer technician, is the one with factual knowledge and the one the interrogatory is propounded on. If Plaintiff is unable to provide his own knowledge as to the underlying foundational nature of the NRG file, he should be required to say so.

A full and complete response is required as this goes directly to the issue of whether Plaintiff has any ownership interest in the copyright work, and to the inadmissibility, lack of foundation, and lack of authentication of the NRG file itself. It also relates directly to Defendants' defenses concerning creation and a potential fraud on the Copyright Office because the dates he accessed and modified the file

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may demonstrate whether the guitar twang sequence was added after the fact, as Defendants contend.

Plaintiff's Contentions Regarding Interrogatory No. 19

i. The Objections Have Merit

Defendants' request for "each and every" creation date, access date and modification date for the "correct" NRG file is overly broad and unduly burdensome on its face. *Echostar Satellite, supra*.

ii. The Response Is Complete

Defendants' contention in this regard is unclear. Is Plaintiff's response somehow inadequate because it was confirmed by a forensic expert? Their baseless allegation about an alleged fraud being perpetrated against the Copyright Office is, again, wildly reckless. Plaintiff cannot provide information about a contention that is not true. Defendants object to the answer because they simply do not like it, but that is not grounds for a motion to compel.

Interrogatory No. 21

Provide each and every time Bryan Pringle accessed the correct NRG file in 2010, and state the date, time, purpose and use of such file each time it was accessed, and the individuals involved or present during such acts.

Answer to Interrogatory No. 21

Objection. Plaintiff objects to Interrogatory No. 21 because it is overly broad, unduly burdensome, vague and not likely to lead to the discovery of relevant evidence. Without waiving said objections, to the best of his recollection, the Plaintiff may have accessed the "correct NRG file" once in or around April or May of 2010, after the first time he heard "I Gotta Feeling," to create an mp3 of "Take a Dive (Dance Version)" to send to his attorneys. Plaintiff further states that he accessed the file in or around December 2010, upon his delivery of the NRG file to his computer expert David Gallant, in order to play its contents for Mr. Gallant.

Defendants' Contentions Regarding Interrogatory No. 21

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i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad, unduly burdensome or vague about the request, and Plaintiff has failed to provide a meaningful basis for these objections.

The relevancy objection is also meritless. Creation and originality of the work are directly at issue in this case. Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response Is Incomplete

Plaintiff's response is also incomplete as it does not provide each and every time the file was accessed in 2010 by date and time. For example Plaintiff allegedly accessed the NRG file to create the deposit copy submitted to the Copyright office. Plaintiff also sent various copies to Defendants' counsel prior to the filing of the lawsuit and allegedly sent the "isolated guitar twang" to the various experts used in the preliminary injunction proceedings. Either Plaintiff has failed to completely answer this interrogatory, or the "isolated guitar twang" provided to Plaintiff's experts during the preliminary injunction proceeding was not from Plaintiff's claimed creation, but from some other source. Plaintiff should be ordered to fully, completely and accurately answer the interrogatory in order to permit Defendants an opportunity to submit *Daubert* motions relating to the Plaintiff's experts' analysis.

To the extent any information responsive to this request is contained on the hard drive Plaintiff discarded during the litigation, Plaintiff should be required to supplement the response to indicate as much.

Plaintiff's Contentions Regarding Interrogatory No. 21

i. The Objections Have Merit

Defendants' request for information relating to "each and every" time that Plaintiff accessed a file in 2010 is overly broad, unduly burdensome, vague and not likely to lead to the discovery of relevant evidence. Plaintiff created the NRG file in 1999. His access in 2010 is irrelevant.

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ii. The Response Is Complete

Defendants' contentions in this regard are unclear. Plaintiff has identified both times that he accessed the NRG file in 2010. Defendants are seemingly displeased because this answer does not comport with their wildly speculative and baseless theory. That is not a reason to file a discovery motion.

Interrogatory No. 22

Provide each and every time Bryan Pringle accessed the correct NRG file in 2011, and state the date, time, purpose and use of such file each time it was accessed and the individuals involved or present during such acts.

Answer to Interrogatory No. 22

Objection. Plaintiff objects to Interrogatory No. 22 because it is overly broad, unduly burdensome, vague and not likely to lead to the discovery of relevant evidence. Without waiving said objection, Plaintiff states that he turned what he understands to be the referenced "correct NRG file" over to Dave Gallant, the computer forensics expert in and around December 2010. Plaintiff did not have the referenced original "correct NRG file" in his possession in 2011.

Defendants' Contentions Regarding Interrogatory No. 22

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad, unduly burdensome or vague about the request, and Plaintiff has failed to provide a meaningful basis for these objections.

The relevancy objection is also meritless. Creation and originality of the work is directly at issue in this case. Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response Is Incomplete

Plaintiff's response is also incomplete as it does not provide each and every time the file was accessed in 2011 by date and time. He merely responds that he did not have the "original" in his "possession" in 2011. If Plaintiff contends he never

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accessed it in 2011, he should supplement and clarify his response. To the extent any information responsive to this request is contained on the hard drive Plaintiff discarded during the litigation, Plaintiff should be required to supplement the response to indicate as much.

Plaintiff's Contentions Regarding Interrogatory No. 22

i. The Objections Have Merit

Defendants' request for information relating to "each and every" time that Plaintiff accessed a file in 2011 is overly broad, unduly burdensome, vague and not likely to lead to the discovery of relevant evidence. Plaintiff created the NRG file in 1999. His access in 2010 is irrelevant.

ii. The Response Is Complete

Plaintiff could not have accessed something that was in the possession of a forensic expert. Plaintiff did not access something that was in the possession of a forensic expert. Defendants can't complain because the facts get in the way of their manufactured defense.

Interrogatory Propounded By Stacy Ferguson Addressing The Sampling Claim

The genesis of this lawsuit was Plaintiff's claim that Defendants had "sampled" Plaintiff's sound recording, "Take a Dive" (Dance Version). While that assertion was largely debunked during Plaintiff's efforts to secure a preliminary injunction in this case, Plaintiff has continued to assert that claim.[7] Although Plaintiff's counsel stated during a November 1, 2011 telephone conference with Defendants' counsel that Plaintiff had decided to abandon that claim, Plaintiff's counsel has thus far refused to formally dismiss that portion of his claim. As such, it

[7] During the preliminary injunction proceedings it was established by expert analysis that the sampling claim was technologically impossible. (*See* Dkt. No. 99 at pages 9-10 [Order denying preliminary injunction based on failure to meet burden on sampling claim]; *see also* Dkt. No. 81-1 [Declaration of Paul Geluso discussing how sampling was technologically impossible].)

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remains relevant and subject to discovery. Likewise, even if that claim is excised from this case with prejudice (as Plaintiff says it will be), Plaintiff's purported good faith basis for maintaining that claim over the last year remains a valid issue for discovery. In this regard, this interrogatory (served 8 *months* ago) requires a factual response.

Interrogatory No. 18

State all FACTS that any of the DEFENDANTS physically appropriated any portion of TAKE A DIVE (DANCE VERSION) SR when creating "I Gotta Feeling."

Answer to Interrogatory No. 18

Objection. Plaintiff objects to Interrogatory No. 18 because it is overly broad, unduly burdensome, and requires disclosure of attorney work product and attorney client privileged information. Without waiving said objections, Plaintiff refers Defendant to the report of expert Mark Rubel attached to Plaintiff's Motion for Preliminary Injunction. Investigation continues.

Amended Answer to Interrogatory No. 18

Objection. Plaintiff objects to Interrogatory No. 18 because it is overly broad, unduly burdensome, and requires disclosure of attorney work product and attorney client privileged information. Without waiving said objections, Plaintiff is not seeking to recover for a physical appropriation of Take a Dive (Dance Version) at this time in light of the Defendants ongoing and willful refusal to disclose the evidence required to establish sampling. Plaintiff reserves the right to seek recovery for physical appropriation of Take a Dive should Defendants produce evidence of said appropriation; investigation continues.

Defendants' Contentions Regarding Interrogatory No. 18

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad and unduly burdensome about the request, and Plaintiff has

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failed to provide a meaningful basis for these objections.

Plaintiff also failed to support the privilege objections and has refused to provide any privilege log. Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response Is Incomplete

As with other responses, Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B).

When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. Defendants are entitled to a full and complete response in an unqualified manner.

Plaintiff's reference to other documents is also improper. An answer to an interrogatory must be complete in itself and should not refer to other documents or interrogatories" at least where such references make it impossible to determine whether an adequate answer has been given without an elaborate comparison of answers." *See e.g*., *Schaife v. Boenne*, 191 F. R.D 590, 594 (N.D. IN. 2000).

Aside from his use of improper qualifiers, Plaintiff has not responded to this interrogatory, which was propounded *eight months* ago. Non-expert discovery is now closed. Plaintiff should be required to provide all facts within his knowledge or possession responsive to this request. If no such facts are provided, the Court should strike Plaintiff's sampling claim (which, in any event, was proven last January to be technologically impossible).

Plaintiff's Contentions Regarding Interrogatory No. 18

i. The Objections Have Merit

Defendants' request for "all facts" in support of a proposition is overly broad,

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unduly burdensome and, quite frankly, impossible to answer given the extent of outstanding discovery due to Plaintiff by the Defendants. Plaintiff's objections are therefore proper. The request is also unduly burdensome on its face. *Echostar Satellite, supra*.

ii. The Response Is Complete

First, Plaintiff refers to the expert report of Mark Rubel which was attached to his Motion for Preliminary Injunction and states his conclusion that Defendants physically appropriated portion of "Take a Dive." Second, unless and until Defendants fully participate in the discovery process, especially Defendants Adams, Riesterer and Guetta, the alleged creators of "I Gotta Feeling," Plaintiff cannot completely respond to this request. Therefore, Plaintiff's investigation continues.

D. Interrogatories Propounded By Headphone Junkie Addressing Access

Interrogatory No. 5

State with particularity each and every communication Plaintiff Bryan Pringle has had with Defendant William Adams, including where, when, the type of communication, and how such communication occurred.

Answer to Interrogatory No. 5

Objection. Plaintiff objects to Interrogatory No. 5 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, Plaintiff states that he submitted his demo CD's to Defendant Adams; and through Interscope Records, Cherrytree Records, UMG, and Martin Kierszenbaum via mail, in or around 2006. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 5

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. Plaintiff reasserts the same boilerplate, unsupported objections.

There is nothing overly broad and unduly burdensome about the request and

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Plaintiff has failed to identify or provide a meaningful basis for these objections. *Blankenship,* 519 F.2d at 429; *DirectTV,* 209 F.R.D. at 458.

The relevancy objection is also meritless. The case involves a copyright claim. Although uncontroverted evidence shows that Defendants Mr. Guetta and Mr. Riesterer independently created the music for "I Gotta Feeling," and that it is therefore irrelevant whether any of the other Defendants had access to Plaintiff's work, Plaintiff has persisted in claiming that access by Defendants other than Mr. Guetta and Mr. Riesterer is relevant. Defendants are therefore entitled to full and complete discovery responses regarding these claims. Plaintiff cannot meet his burden of supporting these objections. *See DirectTV,* 209 F.R.D. at 458.

ii. The Response is Incomplete

As with other responses, Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B).

When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. Defendants are entitled to a full and complete response in an unqualified manner.

Aside from the improper qualifier, Plaintiff has not responded by providing the "where, when, the type of communication, and how such communication occurred." There is no information as to what address mail allegedly was sent to, what was sent, whether a letter was enclosed, and what songs were on the purported "demo CD's." Plaintiff also fails to state how he communicated with Adams "through Interscope Records, Cherrytree Records, UMG, and Martin Kierszenbaum." Access is an essential element of Plaintiff's case, and thus Defendants are entitled to a full and complete response to this interrogatory.

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Plaintiff's Contentions Regarding Interrogatory No. 5

i. The Objections Have Merit

Defendants' request for "each and every communication" is not limited in time or scope to issues of relevance in this case. *Fisher, supra,* 2011 WL 39124 (E.D. Cal. Jan. 5, 2011). Plaintiff's objections therefore are proper. Defendants' request is also unduly burdensome on its face, *Echostar Satellite, supra,* and it seeks information relating to songs that are not germane to this case. *Superior Communications, supra.*

ii. The Responses Are Complete

Plaintiff identified his communications with Defendant Adams. He identified the types of communications he had with Defendant Adams. He identified when these communications occurred. Plaintiff sufficiently responded to the Interrogatory. As for the additional information that Defendants now seek but did not request in the Interrogatory, Plaintiff testified as to these facts in great detail during his deposition. (Dickie Decl. Ex. H pp. 64-78.) Plaintiff has provided all information in his possession on this topic.

Interrogatory No. 6

State with particularity each and every communication Plaintiff Bryan Pringle has had with Defendant Allen Pineda, including where, when, the type of communication, and how such communication occurred.

Answer to Interrogatory No. 6

Objection. Plaintiff objects to Interrogatory No. 6 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, to the best of his recollection and knowledge, Plaintiff never had direct communication with Defendant Allan Pineda. Investigation continues.

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Defendants' Contentions Regarding Interrogatory No. 6

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. Plaintiff reasserts the same boilerplate, unsupported objections.

There is nothing overly broad and unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections. *Blankenship,* 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

The relevancy objection is also meritless. The case involves a copyright claim. Defendants' alleged access to Plaintiff's works is at issue and Defendants are entitled to discover communications evidencing access (or the lack thereof) for their defense.

Plaintiff cannot meet his burden of supporting these objections.

ii. The Response is Incomplete

As with other responses, Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. Either Plaintiff had contact with Mr. Pineda or he did not. Defendants are entitled to a full and complete response in an unqualified manner.

Plaintiff's Contentions Regarding Interrogatory No. 6

i. The Objections Have Merit

Defendants' request for "each and every communication" is not in any way limited in time or scope to issues of relevance in this case. *Fisher, supra,* 2011 WL 39124 (E.D. Cal. Jan. 5, 2011). Plaintiff's objections therefore are proper. Defendants' request is also unduly burdensome on its face, *Echostar Satellite, supra,* and it seeks information relating to songs that are not germane to this case.

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Superior Communications, supra.

ii. The Response Is Complete

Plaintiff acknowledges that he has never had direct communication with Defendant Pineda. As noted elsewhere in Plaintiff's discovery responses, Plaintiff has communicated regarding "Take a Dive" with various music publishers, record companies, talent managers, songwriters, booking agents and radio stations. Discovery may reveal that in doing so, Plaintiff indirectly communicated with Defendant Pineda. Plaintiff's response is complete and the investigation does indeed continue.

Interrogatory No. 7

State with particularity each and every communication Plaintiff Bryan Pringle has had with Defendant Jaime Gomez, including where, when, the type of communication, and how such communication occurred.

Answer to Interrogatory No. 7

Objection. Plaintiff objects to Interrogatory No. 7 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, to the best of his recollection and knowledge, Plaintiff never had direct communication with Defendant Jaime Gomez. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 7

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. Plaintiff reasserts the same boilerplate, unsupported objections.

There is nothing overly broad and unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections. *Blankenship,* 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

The relevancy objection is also meritless. The case involves a copyright claim. Defendants' alleged access to Plaintiff's works is at issue and Defendants are

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entitled to discover communications evidencing access (or the lack thereof) for their defense.

Plaintiff cannot meet his burden of supporting these objections. *Blankenship,* 519 F.2d at 429; *DirectTV,* 209 F.R.D. at 458.

ii. The Response is Incomplete

As with other responses, Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. Either Plaintiff had contact with Mr. Gomez or he did not. Defendants are entitled to a full and complete response in an unqualified manner.

Plaintiff's Contentions Regarding Interrogatory No. 7

i. The Objections Have Merit

Defendants' request for "each and every communication" is not in any way limited in time or scope to issues of relevance in this case. *Fisher, supra,* 2011 WL 39124 (E.D. Cal. Jan. 5, 2011). Plaintiff's objections therefore are proper. Defendants' request is also unduly burdensome on its face, *Echostar Satellite, supra,* and it seeks information relating to songs that are not germane to this case. *Superior Communications, supra.*

ii. The Response Is Complete

Plaintiff acknowledges that he has never had direct communication with Defendant Gomez. . As noted elsewhere in Plaintiff's discovery responses, Plaintiff has communicated regarding "Take a Dive" with various music publishers, record companies, talent managers, songwriters, booking agents and radio stations. Discovery may reveal that in doing so, Plaintiff indirectly communicated with Defendant Gomez. Plaintiff's response is complete and the investigation does

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indeed continue.

Interrogatory No. 8

State with particularity each and every communication Plaintiff Bryan Pringle has had with Defendant Stacy Ferguson, including where, when, the type of communication, and how such communication occurred.

Answer to Interrogatory No. 8

Objection. Plaintiff objects to Interrogatory No. 8 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, to the best of his recollection and knowledge, Plaintiff never had direct communication with Defendant Stacy Ferguson. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 8

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. Plaintiff reasserts the same boilerplate, unsupported objections.

There is nothing overly broad and unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

The relevancy objection is also meritless. The case involves a copyright claim. Defendants' alleged access to Plaintiff's works is at issue and Defendants are entitled to discover communications evidencing access (or the lack thereof) for their defense.

As the party asserting objections, Plaintiff has the burden to support the objections. Plaintiff cannot do so.

ii. The Response is Incomplete

As with other responses, Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. When a party is unable to state its contentions because discovery or investigation is not yet

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completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. Either Plaintiff had contact with Ms. Ferguson or he did not. Defendants are entitled to a full and complete response that is not limited by the use of "investigation continues" or other qualifiers such as the use of the phrase "direct communication." The request seeks information regarding "each and every" communication, not just "direct" ones. Defendants are entitled to an unqualified response.

Plaintiff's Contentions Regarding Interrogatory No. 8

i. The Objections Have Merit

Defendants' request for "each and every communication" is not in any way limited in time or scope to issues of relevance in this case. *Fisher, supra*, 2011 WL 39124 (E.D. Cal. Jan. 5, 2011). Plaintiff's objections therefore are proper. Defendants' request is also unduly burdensome on its face, *Echostar Satellite, supra,* and it seeks information relating to songs that are not germane to this case. *Superior Communications, supra.*

ii. The Responses Are Complete

Plaintiff acknowledges that he has never had direct communication with Defendant Ferguson. As noted elsewhere in Plaintiff's discovery responses, Plaintiff has communicated regarding "Take a Dive" with various music publishers, record companies, talent managers, songwriters, booking agents and radio stations. Discovery may reveal that in doing so, Plaintiff indirectly communicated with Defendant Ferguson. Plaintiff's response is complete and the investigation does indeed continue.

Interrogatory No. 12

Does Plaintiff contend that any of the individually named defendants Adams, Pineda, Gomez, Ferguson, Guetta, and/or Reisterer had access to the original Take A Dive copyrighted in 1998? If so, provide a full and complete factual basis for

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such contention, including the identification of individuals with knowledge and an identification of any documents that refer or relate to this contention.

Answer to Interrogatory No. 12

Objection. Plaintiff objects to Interrogatory No. 12 because it is overly broad, vague and to the extent it calls for a legal conclusion. Without waiving said objections, Plaintiff refers to the Answers and Objections to Interrogatories No. 5-11, above. Additionally, Plaintiff had multiple websites on the internet which contained downloadable version of "Take a Dive," the sale of "Take A Dive" through Dekonstrucktion Records, as well as sending out via mail thousands of demo CD's containing "Take A Dive" from around 1995 to 2008 to Interscope Records, UMG, publishing companies, record labels, famous songwriters, music contest submissions, Gum Productions, Dave Guetta, William Adams, and Martin Kierszenbaum, just to name a few. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 12

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing vague about the request and Plaintiff has failed to identify or attempt to clarify any alleged vagueness. Plaintiff has also failed to provide a meaningful basis for the overbroad objection.

The "calls for a legal conclusion" objection is also meritless. A party may be required to state its contentions relating to "fact or the application of law to fact." Fed. R. Civ. P. 33 (a)(2). Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response is Incomplete

Plaintiff's reference to other answers and objections is improper. An answer to an interrogatory must be complete in itself and should not merely refer to other interrogatories. *See e.g., Schaife*, 191 F. R.D at 594.

Plaintiff also fails to state whether or not he contends Defendants had access

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to the original Take A Dive, copyrighted in 1998.

Although evasive and unclear, Plaintiff's reference to his websites and demo CD's suggests that he contends Defendants had access. Yet, Plaintiff does not identify the domain names for his "multiple websites," the time period he had them, and whether he contends that Defendants accessed all or merely some of them, and when.

Plaintiff's reference to "just to name a few" further demonstrates the response is incomplete, and evasive. Defendants are entitled to a full and complete factual basis for such contention, including the identification of individuals with knowledge and an identification of any documents that refer or relate to Plaintiff's contention.

Finally, Plaintiff's inclusion that "investigation continues" is improper. Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B). Plaintiff has not provided a complete response, and there is no reason why Plaintiff cannot provide a full and complete response at this time unless the information was stored on the discarded hard drive. In that case, Plaintiff should be required to supplement his response to indicate as much.

Plaintiff's Contentions Regarding Interrogatory No. 12

i. The Objections Have Merit

Defendants' request for a "full and complete factual basis" is unduly burdensome on its face, *Echostar Satellite, supra*.

ii. The Response Is Complete

Defendants' request is, in part, a combination of Interrogatory Nos. 5, 6, 7 and 8. As such, Plaintiff refers to his response to Interrogatory Nos. 5, 6, 7 and 8. In addition, Plaintiff also refers to numerous other individuals to whom he sent "Take a Dive." At the time, Plaintiff's investigation was ongoing. Plaintiff has since supplemented this information.

Interrogatory No. 13

Does Plaintiff contend in this litigation that access to the original Take A

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Dive copyrighted in 1998 is shown by "striking similarity"? If so, provide a full and complete factual basis for such contention, including the identification of any portion of the accused work that is "strikingly similar" to the original Take A Dive copyrighted in 1998.

Answer to Interrogatory No. 13

Objection. Plaintiff objects to Interrogatory No. 13 because it is overly broad, vague and to the extent it calls for a legal conclusion. To the extent an answer is required, Plaintiff states that "Take a Dive" is substantially similar to "I Gotta Feeling."

Defendants' Contentions Regarding Interrogatory No. 13

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing vague about the request and Plaintiff has failed to identify or attempt to clarify any alleged vagueness. Plaintiff has also failed to provide a meaningful basis for the overbroad objection.

The "calls for a legal conclusion" objection is also meritless. A party may be required to state its contentions relating to "fact or the application of law to fact." Fed. R. Civ. P. 33 (a)(2).

As the party asserting objections, Plaintiff has the burden to support the objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458. Plaintiff cannot do so.

ii. The Response is Incomplete

Plaintiff should be required to respond to this interrogatory by stating whether or not he claims access to "Take a Dive" original is established through striking similarity. Plaintiff instead responds that the two works are "substantially similar" but provides no factual basis including what portions, if any, are similar. Plaintiff does not discuss what aspects of the work at issue he finds similar such as the rhythm, timing, organization, or any other number of factors. Plaintiff should

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respond, as substantial similarity is another element of the copyright claim.

Plaintiff's Contentions Regarding Interrogatory No. 13

i. The Objections Have Merit

Defendants' request for a "full and complete factual basis" is overly broad, vague and unduly burdensome on its face. *Echostar Satellite, supra*. Further, the Interrogatory in fact does seek legal arguments and not factual arguments and thus the "seeks a legal conclusion" objection is likewise proper.

ii. The Response Is Complete

Plaintiff answers the Interrogatory in the affirmative and he has otherwise provided the information available to him at this point. Plaintiff will supplement this response when his expert has completed his report.

Interrogatory No. 14

Does Plaintiff contend that any of the individually named defendants Adams, Pineda, Gomez, Ferguson, Guetta, and/or Reisterer had access to the derivative version of Take A Dive (with the guitar twang sequence) on a basis other than an argument of "striking similarity"? If so, provide a full and complete factual basis for such contention, including the identification of individuals with knowledge and an identification of any documents that refer or relate to this contention.

Answer to Interrogatory No. 14

Objection. Plaintiff objects to Interrogatory No. 14 because it is overly broad, unduly burdensome and to the extent it calls for a legal conclusion. Without waiving said objections, Plaintiff states that Defendant songwriters Guetta and Riesterer directly and through their historical association with Joachim Guerrard had a reasonable opportunity to access the derivative version of "Take a Dive" through Plaintiff's submission of the song on his demo CD to Gum Productions, sometime around 2001 to 2003. Gum Productions is a French company that was owned and created by Guetta and Joachim Garraud, both of whom qualify as intermediaries to Riesterer. Plaintiff also refers to the Answers and Objections to Interrogatories

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No. 5-12, above. Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 14

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad or unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections.

The "calls for a legal conclusion" objection is also meritless. A party may be required to state its contentions relating to "fact or the application of law to fact." Fed. R. Civ. P. 33 (a)(2). Plaintiff cannot meet his burden of supporting these objections. *See Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response is Incomplete

Plaintiff's reference to other answers and objections is improper. An answer to an interrogatory must be complete in itself and should not refer to other interrogatories. *Schaife*, 191 F. R.D. at 594.

Plaintiff also fails to answer the interrogatory completely, having failed to identify individuals and documents supporting his claim of access. Further, while Plaintiff contends he mailed the song to "Gum Productions," he does not provide the address to which it was sent, or indicate to whom it was addressed. These are important facts needed to gauge the veracity of Plaintiff's assertions and allow Defendants to defend against them. Again, Defendants are entitled to a response.

As with other responses, Plaintiff includes in his response that "investigation continues." Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B).

When a party is unable to state its contentions because discovery or investigation is not yet completed, it must seek a court order authorizing a delay in responding to the interrogatory. Fed. R. Civ. P. 33(a)(2). Plaintiff has not done so. There is no reason why Plaintiff cannot provide a full and complete response at this time. Defendants are entitled to a full and complete response in an unqualified

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manner.

Plaintiff's Contentions Regarding Interrogatory No. 14

i. The Objections Have Merit

Defendants' requests for a "full and complete factual basis" is overly broad and unduly burdensome on its face and additionally to the extent that it requests information that is in the exclusive possession of Defendants and third parties.

ii. The Response Is Complete

Defendants' request is, in part, a combination of Interrogatory Nos. 5, 6, 7, 8 and 12. As such, Plaintiff refers to those responses. Plaintiff also provides a factual basis for his contention that Defendants had access through Defendants Guetta and Riesterer. This response is complete and, due to Defendants' adherence to a "rolling" production schedule and their failure to fully respond to outstanding requests, investigation does indeed continue. Plaintiff otherwise relies on his responses to the prior discovery requests and his deposition testimony that set forth the basis for his contention that the Defendants had access.

Interrogatory No. 15

If Plaintiff Bryan Pringle has knowledge of any information that refers or relates to his contention that any Defendant had access to his work, provide a full and complete identification of such information and identify all other individuals with knowledge and any documents relating to the information.

Answer to Interrogatory No. 15

Objection. Plaintiff objects to Interrogatory No. 15 because it is overly broad, unduly burdensome and to the extent it calls for a legal conclusion. Without waiving said objections, Plaintiff states that he received a written communication from Joachim Garraud and Dave Guetta, via Gum Productions, in or around 2001 to 2003, acknowledging receipt of Plaintiff's music submissions, including "Take a Dive" – the Dance Version. Please also refer to Answers to Interrogatories No 5-12, above. Investigation continues.

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Defendants' Contentions Regarding Interrogatory No. 15

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad or unduly burdensome about the request and Plaintiff has failed to identify or provide a meaningful basis for these objections.

The "calls for a legal conclusion" objection is also meritless. A party may be required to state its contentions relating to "fact or the application of law to fact." Fed. R. Civ. P. 33 (a)(2). Plaintiff cannot meet his burden of supporting these objections. *Blankenship*, 519 F.2d at 429; *DirectTV*, 209 F.R.D. at 458.

ii. The Response is Incomplete

Plaintiff's reference to other answers and objections is improper. An answer to an interrogatory must be complete in itself and should not merely refer to other interrogatories. *Schaife v. Boenne*, 191 F. R.D. at 594.

Plaintiff also fails to answer the interrogatory. He should be ordered to identify individuals and documents supporting his claim of access. Moreover, given that he references a written communication from Joachim Garraud and Dave Guetta (via Gum Productions)—a claim Plaintiff coincidentally raised only after Mr. Guetta was deposed at the end of September of this year—he must provide information as to when that document was sent, the address from which and to which it was sent, where that document is located, and whether it still exists. Plaintiff also fails to state whether any other individuals possess knowledge concerning that alleged communication, and if so, to identify those individuals. Allegations without evidentiary support do not help anyone, and merely waste this Court's time and Defendants' money. This is critical evidence. Where is it? The Discovery Act is not intended to be the legal equivalent of "hide and seek," and this Court should not condone such gamesmanship.

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Plaintiff's Contentions Regarding Interrogatory No. 15

i. The Objections Have Merit

Defendants' request for a "full and complete factual basis" is overly broad and unduly burdensome on its face and additionally to the extent that it requests information that is in the exclusive possession of Defendants and third parties.

ii. The Response Is Complete

Defendants' request is a combination of the prior Interrogatories and, as such Plaintiff refers to those responses. This response is complete and, due to Defendants' adherence to a "rolling" production schedule and their failure to fully respond to outstanding requests, investigation does indeed continue.

Interrogatory No. 25

If you contend that any Defendant has infringed any copyright of Plaintiff Bryan Pringle other than Take A Dive or Take A Dive (Dance Version), provide a complete factual basis for contending that they Defendant had access and that the accused work is substantially similar.

Answer to Interrogatory No. 25

Objection. Plaintiff objects to Interrogatory No. 25 because it is overly broad, unduly burdensome and not likely to lead to the discovery of relevant evidence. Without waiving said objections, at this particular time, Plaintiff states that Dave Guetta's song, "Love is Gone" contains the guitar twang sequence of "Take a Dive" and as stated in his deposition, the Defendants may have infringed "If We Ever," "One Love," "Meet Me Halfway," "Someday," "Where Them Girls At," "Best One Yet," "One More Chance," "Invisible," and "Showdown." Investigation continues.

Defendants' Contentions Regarding Interrogatory No. 25

i. The Objections Are Meritless

Plaintiff's response and objections are improper in several respects. There is nothing overly broad and unduly burdensome about the request, and Plaintiff has failed to provide a meaningful basis for these objections. *Blankenship*, 519 F.2d at

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429; *DirectTV,* 209 F.R.D. at 458.

ii. The Response is Incomplete

The response is also incomplete. Plaintiff has merely listed the names of other songs written, recorded or performed by The Black Eyed Peas, but he has not identified which works, if any, he claims these songs infringe on. Plaintiff also has failed to provide whether he contends Defendants had access to his other songs, what portions are substantially similar, if any, and how Defendants infringed.

Finally, Plaintiff's inclusion that "investigation continues" is improper. Defendants are entitled to all information "available" to Plaintiff. Fed. R. Civ. P. 33 (b)(1)(B). Plaintiff has an independent to duty to supplement if additional information is uncovered; to the extent he is withholding information the response is incomplete and improper.

Plaintiff's Contentions Regarding Interrogatory No. 25

i. The Objections Have Merit

Defendants' request for a "complete factual basis" for the contention that Defendant had access and that the accused work is "substantially similar" is unduly burdensome on its face and necessarily calls for a legal conclusion. Defendants also request information that may be in their exclusive possession or in the possession of third parties. Plaintiff's objections are proper.

ii. The Responses Are Complete

Defendants' request is, in part, a combination of the prior Interrogatories and, as such Plaintiff refers to those responses. Plaintiff also specifies the particular songs that he believes Defendants' may have infringed, having already set forth the his delivery of said songs to Defendants and Defendants' intermediaries. This response is complete and, due to Defendants' adherence to a "rolling" production schedule and their failure to fully respond to outstanding requests, investigation does indeed continue.

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DEFENDANTS' CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court enter an order: (1) compelling Plaintiff to provide further responses to the interrogatories discussed herein; and (2) awarding Defendants sanctions for having to bring this Motion in the amount of $15,000.00 (*see* Pink Decl. ¶ 16).

PLAINTIFF'S CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter an order: (1) Denying Defendants' Motion; and (2) awarding Plaintiff sanctions for having to respond to this motion.

Dated: November 16, 2011

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