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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, *et al.*, Defendants.	Case No. SACV 10-1656 JST(RZx) **DISCOVERY MATTER** **PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL** DATE: January 23, 2012 TIME: 10:00 a.m. CTRM: 540

I. INTRODUCTION

Defendants bring this motion because they lack a legitimate defense. Plaintiff has responded fully to each interrogatory posed and has provided proper objections. That Defendants do not like Plaintiff's responses because they undercut Defendants' theory is not a valid reason to bring a motion to compel. Their contentions regarding Plaintiff's objections are particularly meritless given they have relied on identical objections in less availing circumstances. Defendants are desperately fishing for any legitimate defense and they cannot complain that their nets have come up empty. Their motion should be denied.

II. FACTS

Plaintiff has presented uncontroverted evidence that he wrote and recorded "Take a Dive" and its derivative dance version in 1999. (Dickie Decl. ¶ 4)[1] He has described in painstaking detail why he wrote the song (SAF ¶115),[2] how he created its component sounds (SAF ¶¶ 116, 120, 124 and Dickie Decl. ¶ 4), and how he arranged these sounds to create the final product (SAF ¶121). Plaintiff preserved the evidence of all of these things and he produced uncontroverted evidence that the creation file for "Take a Dive" was last accessed and modified on August 22, 1999. (Dickie Decl. ¶ 5, SAF ¶¶ 128, 181, 182, 190). Plaintiff has also detailed Defendants' access to "Take a Dive." He sent it to Defendants Adams, UMG, Interscope and EMI and retained copies of his receipts. (SAF ¶ 181, Dck. No. 157, p. 42). He sent it to the music production company co-founded by Defendant Guetta and Joachim Garraud. (SAF ¶ 132). They liked it so much they asked him to send them more material. (SAF ¶¶ 149, 150).

When the Black Eyed Peas released "I Gotta Feeling," its similarities to "Take a Dive" were undeniable. Defendants' deposition testimony confirmed why: Guetta and

[1] "Dickie Decl." refers to the Declaration of Dean Dickie filed concurrently with Plaintiff's Portion of the Joint Stipulation, Dck. No. 157-3.

[2] "SAF" refers to Plaintiff's Statement of Additional Facts filed concurrently with his Opposition to Defendants' Motion for Summary Judgment, Dck. No. 197.

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Garraud, two recipients of "Take a Dive", collaborated with Defendant Riesterer in selecting the instrumental portion of "I Gotta Feeling." (SAF ¶ 141). First, Garraud and Riesterer worked on the song "Love is Gone" for Guetta's album. (SAF ¶ 151). Through their exchange of musical "sounds" and ideas, they came upon the "guitar twang sequence" that Riesterer admitted was eventually used in "I Gotta Feeling." (SAF ¶¶ 153-154). Guetta and Riesterer used this same sequence again in 2008 on a song called "David Pop GTR." (SAF ¶¶ 157-158). It was around this time that Defendant Adams asked Guetta to produce a song for the Black Eyed Peas like "Love is Gone" because Adams loved its "guitar twang sequence." (SAF ¶¶ 159-161). Guetta sent "David Pop GTR" to Adams who thought it was "amazing" because of the "guitar chord progression." (SAF ¶ 157). Adams added his vocals and lyrics and "David Pop GTR" became "I Gotta Feeling." (SAF ¶ 168).

Defendants' own expert concluded that "copying" was the only explanation for the similarities between "Take a Dive" and "I Gotta Feeling." ("Geluso Decl. ¶ 31 filed concurrently with Defendants' Motion for Summary Judgment, Dck. No. 162). Backed into a corner, Defendants turned an about face and began to make the incredible claim that Plaintiff somehow defied the time-space continuum by copying the "guitar twang sequence" from "I Gotta Feeling" in 2009 and incorporating it into "Take a Dive" which he created in 1999.

Defendants have no evidence to support this theory and they cannot even explain how they might have created the "guitar twang sequence." Adams has no idea where it came from and he carefully specified that Guetta merely "represented" that he composed it himself. (SAF ¶169). Guetta quickly claimed it "came from Riesterer." (SAF ¶170). Riesterer offered two wholly contradictory explanations but ultimately admitted that he "doesn't know exactly" how the sequence was created. (SAF ¶ 173). Rather than face these facts, Defendants have gone fishing for new ones. Plaintiff should not be penalized because the truth belies their theory.

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III. ARGUMENT

The Federal Rules clearly set forth that a party may only obtain discovery regarding matters relevant to the **actual claims and defenses** involved in an action.[3] Fed.R.Civ.P. 26(b)(1), *Sierrapine v. Refiner Products Mfg. Inc.*, 275 F.R.D. 604 (E.D. Cal. 2011). A party cannot "go on a fishing expedition to try to find evidence for a 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). Plaintiff has responded to each interrogatory fully and testified consistently in his deposition. Defendants are not entitled to relief simply because his responses undermine their theory, or because Plaintiff responded subject to and without waiving legitimate objections.

A. Plaintiff Has Properly Objected To Defendants' Requests. Defendants' contentions about Plaintiff's objections are confusing, hypocritical and unfounded. For starters, Defendants contend that Plaintiff's use of "overly broad and unduly burdensome" objections is improper. But courts have consistently held that requests that are neither limited in time nor scope are overly broad and unduly burdensome. *See, e.g., Fisher v. Felker*, 2011 WL 39124 (E.D. Cal. Jan. 5, 2011). Courts have also consistently held that requests for information about an issue that is not germane to a case are vague, overbroad and unduly burdensome. *See, e.g., 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"…). Defendants' requests consistently went beyond those bounds. For example, their requests for information relating to every song Plaintiff has ever downloaded, sampled or purchased were objectionable because they were not in any way limited in time or scope to the songs at issue in this case. (Dck. No. 157, pp. 15-21).

[3] *See also* Advisory Committee Notes to the 2000 Amendment to Fed.R.Civ.P. 26(b)(1).

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Courts have also consistently held that the use of omnibus terms in requests like "any and all" and "each and every" or phrases like "all information referring to" or "relating to" or "pertaining to" a general category are consistently deemed unduly burdensome on their face. *See, e.g.*, *Echostar Satellite LLC v. Freetech, Inc.*, 2009 WL 8398695 (N.D. Cal. May 18, 2009).[4] Defendants' requests are replete with such examples and Plaintiff properly objected to those requests seeking "each and every," "all FACTS" or "a full and complete factual basis" supporting a given proposition. (Dck. No. 157, pp. 43, 56-61).

What is most confusing about Defendants' contentions is the extent to which they have already used and relied upon identical objections. Each of the Defendants used the same general objections months before Plaintiff did. (*Id*. at 14). They also each objected and refused to respond to interrogatories seeking information relating to other allegations of infringement made against the Black Eyed Peas on the grounds of relevance, overbreadth and privilege, among others. (*Id*. at 17). Defendant Adams objected and refused to identify information related to his alleged creation of "I Gotta Feeling" on the grounds of "vagueness" and "relevance." (*Id*. at 34). Adams' counsel also objected to questions about sampling on the grounds of "vagueness." He then stated that the term meant different things to different musicians. (*Id*. at 17). Defendants are judicially estopped from obtaining any relief from the Court for Plaintiff's legitimate use of these objections when they themselves have stated and relied upon them even though Plaintiff's discovery requests were far more meritorious. *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.").

[4] *See also Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533 (D. Kan. 2003); *Moss v. Blue Cross and Blue Shield of Kansas, Inc.*, 241 F.R.D. 683 (D. Kan. 2007).

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B. Plaintiff's Responses Were Complete. Plaintiff answered each of Defendants' interrogatories subject to and without waiving the aforementioned objections. Plaintiff has consistently answered the precise interrogatory posed despite his objections. Defendants complain because Plaintiff's responses often contradict Defendants' theory. Defendants apparently seek to compel Plaintiff to provide only responses that bolster Defendants' theory of the case. For example, Defendants asked Plaintiff to identify "each and every creation date, access date, and modified date for the correct NRG file." Plaintiff responded that the file was created, accessed and last modified on August 22, 1999 at 12:54 p.m. (Dck. No. 157, pp. 34-36). He never accessed or modified the file after that moment. Defendants cannot cry foul because this response undercuts their theory or because Plaintiff has not provided modification and access information for 2010 and 2011. (*Id*. at pp. 34-40).

Defendants also complain about the fact that Plaintiff qualified some interrogatory responses by stating that his investigation continued. As they are aware, they are the very reason for this. They failed to produce the computers, hard drives and equipment they allegedly used to create the instrumentation for "Love is Gone" and "I Gotta Feeling," claiming that Riesterer gave it all "to a friend." (SAF ¶ 175). Many of the purported creation files for "I Gotta Feeling" that they did produce were actually created after the song was recorded and released, raising more questions about their conduct, and they improperly marked them Attorneys' Eyes Only. (SAF ¶ 177). Finally, Defendants Riesterer, Adams and Guetta all admitted months after they were served with requests and purportedly responded that they (a) weren't aware that they had been asked to produce information and (b) did not conduct any search for same.

Plaintiff understandably qualified his responses in light of Defendants' conduct and Defendants' objection to same is unfounded.

IV. CONCLUSION

For each of these reasons, as set forth more fully in Plaintiff's portion of the joint stipulation, Defendants' motion to compel should be denied.

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Dated: January 9, 2012

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CERTIFICATE OF SERVICE

On January 9, 2012, I electronically filed the foregoing PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL using the CM/ECF system which will send notification of such filing to the following registered CM/ECF Users:

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I am unaware of any attorneys of record in this action who are not registered for the CM/ECF system or who did not consent to electronic service.

I certify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: January 9, 2012 /s/Colin C. Holley

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