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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DONNA CORBELLO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS GAETANO DEVITO, *et al.*, )  
 )  
 Defendants. )

Case No. 2:08-cv-00867-RCJ-PAL

**ORDER**

(Mot. Protective Order - Dkt. #298)  
(Mot. Compel - Dkt. #326)  
(Mot. Sanctions re: Discovery - Dkt. #327)

The Court conducted a hearing on July 13, 2010 on (1) a *Motion for Protective Order* (Dkt. #298) filed by the New Defendants; (2) a *Cross-Motion to Compel* (Dkt. #326), filed by Plaintiff, directed to Defendants Brickman and Elice; and (3) Plaintiff’s *Cross-Motion for Sanctions* (Dkt. #327). At the hearing, the Court admonished counsel regarding their lack of cooperation concerning Electronically Stored Information (“ESI”) and the exchange of *ad hominem* attacks; ordered defense counsel to produce “the last round of emails” found by Defendant Brickman on a recently-discovered computer; ordered counsel to meet and confer, in person, to discuss Plaintiff’s *Document Production Request Nos. 9 and 16* to Defendants Brickman and Elice, which the Court found overly-broad, and Defendants’ responses, which the Court found incomplete and/or evasive; and ordered counsel, in lieu of further discovery motions, to prepare and file a *Joint Status Report* by August 10, 2010. (See Minutes of Proceedings, Dkt. #333.)

Counsel met in Los Angeles on July 30, 2010, held follow-up conferences by telephone, and filed their *Joint Status Report* (Dkt. #335) on August 10, 2010, concerning the pending *Motion* and *Cross-motions*, and other discovery disputes discussed during their conferences which remain unresolved. The parties made significant progress in resolving the issues raised by these motions in their meet and confer sessions, but were unable to resolve all of their disputes.

1 The Court conducted a second hearing on August 12, 2010 regarding the issues presented in the  
2 *Joint Status Report*, including: (1) the status of Defendant Brickman’s production of outstanding  
3 emails; (2) the discovery of additional emails possessed by Defendant Elice, which were first reported  
4 to Plaintiff’s counsel at the July 30, 2010 personal meeting; (3) Defendants’ remaining objections to  
5 *Document Production Request Nos. 9 and 16*, as narrowed by Plaintiff; (4) defense counsel’s proposed  
6 temporal limitations on Plaintiff’s discovery, as to Defendants Brickman and Elice; (5) Defendants’  
7 production of native files for the screen writing software used by Defendant Brickman in his early work  
8 on the *Jersey Boys* script; (6) the status of Defendants’ production of scripts, drafts of scripts, and insert  
9 pages showing changes in the script for *Jersey Boys* from its conception to the present, for each  
10 performing production in the U.S. and abroad; (7) Plaintiff’s requests for privilege logs for responsive  
11 documents which may have been withheld by Defendants due to privilege or work-product immunity  
12 claims; (8) Plaintiff’s requests for certain financial discovery; and, (9) Plaintiff’s requests for discovery  
13 concerning other *Jersey Boys* copyright litigations in which certain New Defendants and third-party  
14 witnesses are involved. (See Dkt. #336.)

15 The Court has considered the *Motion, Cross-Motions, Responses* (Dkt. ##317, 328) and *Replies*  
16 (Dkt. ##325, 331), the arguments of counsel at the hearings, and the parties’ *Joint Status Report*.  
17 Having reviewed and considered these matters, the pending discovery motions are **GRANTED in part**  
18 and **DENIED in part** and the discovery disputes outlined in the parties’ *Joint Status Report* (Dkt #335)  
19 are resolved as follows: the Court **DENIES** the New Defendants’ *Motion for Protective Order* (Dkt.  
20 #298); the Court **GRANTS in part**, and **DENIES in part**, Plaintiff’s *Cross-Motion to Compel* (Dkt.  
21 #326); the Court **DENIES** Plaintiff’s *Cross-Motion for Sanctions* (Dkt. #327); and, makes the  
22 following findings and rulings:

23 **I. New Defendants’ Motion for Protective Order re: Native Files (Dkt. #298).**

24 **A. As to Emails and Other Correspondence (Under Plaintiff’s Requests for Production**  
25 **Nos. 9 and 16 as Narrowed).**

- 26 1. The Court finds defense counsel did not comply with their obligations to meet  
27 and confer with Plaintiff’s counsel before seeking a protective order as required  
28 by FRCP 37 and LR 26-7(b).

1                   2.       The New Defendants’ Motion for Protective Order is **DENIED**.

2   **II.   Plaintiff’s Cross-Motion to Compel (Dkt. #326).**

3       **A.   Scripts, Drafts of Scripts, “Change Pages” for *Jersey Boys* Script.**

4                   1.       Plaintiff claims that at the time her Cross-Motion to Compel was filed,  
5                               Defendants had not produced documents showing all changes made to the script  
6                               for *Jersey Boys*, from the time of its initial draft, to the present for all productions  
7                               performed in the United States and abroad. In the Joint Status Report (Dkt.  
8                               #335), and at the August 12, 2010 hearing, counsel for the New Defendants  
9                               acknowledged that Defendant Elice had additional documents reflecting changes  
10                              in *Jersey Boys* performance scripts, and changes made for the abridged *Jersey*  
11                              *Boys libretto*, published in the *Jersey Boys* coffee table book which had not yet  
12                              been produced.

13                   2.       New Defendants and Elice have produced hundreds of scripts and drafts of  
14                              scripts which are in .pdf format. In addition, New Defendant Dodger Theatricals  
15                              produced a notebook of page changes to scripts before the August 12, 2010  
16                              hearing, maintained as hard copy, that identifies at the top of each page the date  
17                              on which changes to that portion of the script occurred in the days leading to the  
18                              final, locked script for the Broadway production. New Defendant Brickman also  
19                              produced what he represents are the only two comments made using the notes  
20                              function of the Screenwriter software at issue. New Defendants have not  
21                              produced these scripts in the native Screenwriter format and object to doing so  
22                              on the grounds that doing so would be needlessly burdensome and duplicative,  
23                              and that any information that they might contain has already been produced to  
24                              Plaintiff. Plaintiff continues to seek these files on the grounds that they may  
25                              contain some discoverable imbedded data.

26                   3.       The Court finds that the production of scripts and drafts in .pdf is a reasonably  
27                              usable format that comports with the New Defendants’ obligations. The parties  
28                              discussed Plaintiff’s preference for native file production at the initial case

1 conference on November 26, 2008, but reached no agreement. New Defendants  
2 represent that, with the additional “change pages” for *Jersey Boys* scripts and  
3 drafts of the abridged *Jersey Boys libretto* and coffee table book which were  
4 produced shortly after the August 12, 2010 hearing, that Plaintiff already has the  
5 documents she seeks in a reasonable, usable format. The New Defendants “need  
6 not produce the same electronically stored information in more than one form.”  
7 Fed.R.Civ.P. 34(b)(2)(E)(iii). The Court finds that to compel additional  
8 production of these materials in native format would be an unnecessary burden  
9 and an unjustifiable waste of time and resources. The Plaintiff’s request to  
10 produce these materials in native format is therefore **DENIED**.

11 **B. E-mails and Correspondence Requested in Plaintiff’s *Requests for Production No.s***  
12 **9 and 16.**

- 13 1. Plaintiff’s *Requests for Production of Documents No. 9 and 16* were phrased to  
14 require the production of all documents which refer to or relate to the subject  
15 matter described. The Court made it clear in the status conference conducted in  
16 July 2010, that these requests were overly-broad and lacking reasonable  
17 particularity. The Court made it equally clear that the New Defendants’  
18 responses to these discovery requests were inadequate and evasive, and required  
19 the parties to meet and confer in a good faith effort to resolve or narrow their  
20 disputes.
- 21 2. At the time Plaintiff’s *Cross-Motion to Compel* was filed, defense counsel had  
22 not produced all responsive emails from Defendants Brickman and Elice.
- 23 3. Defense counsel had not produced the “last round of emails” from Defendant  
24 Brickman’s recently discovered computer, referenced in the Court’s *Order* of  
25 July 14, 2010 (Dkt. #333) when the August 12, 2010 hearing was conducted, but  
26 represented they were in the process of doing so.
- 27 4. At the meeting between counsel on July 30, 2010, defense counsel informed  
28 Plaintiff’s counsel that thousands of potentially-responsive emails from

1 Defendant Elice exist, which had not previously been disclosed. Defense counsel  
2 also disclosed a desktop computer used by Defendant Brickman's wife and/or  
3 daughter may, but is unlikely, to have additional potentially-responsive e-mails.

4 5. Such emails were requested in Plaintiff's *Interrogatory No. 24*, and *Document*  
5 *Production Request Nos. 2, 9, and 16* to Defendants Brickman and Elice, served  
6 on January 8, 2009.

7 6. Plaintiff's *Document Production Request Nos. 9 and 16*, as served, were overly-  
8 broad, and Plaintiff has narrowed these requests to enumerate 15 types of email  
9 communications which Defendants Elice and/or Brickman may possess. (Dkt.  
10 #335-1.) Of these, Defendants have ongoing objections to subpart 7, seeking  
11 communications relating to "[t]he transition and/or adaptation (planned or "in  
12 progress") of *Jersey Boys* from stage to film, on grounds that it pertains to  
13 prospective infringements. Defendants also seek a January 2007 time limitation  
14 as to other subparts, specifically 1, 3, 6, and 9, and propose that communications  
15 responsive to other subparts, namely, 2, 4, 5, 8, 10, 12, 12, 13, 14, and 15, be  
16 exempt from this temporal limitation, but subject to a search term retrieval  
17 procedure.

18 7. New Defendants' request a time limitation on production responsive to the  
19 fifteen categories Plaintiff narrowed and revised with respect to *Requests for*  
20 *Production Request Nos. 9 and 16*, as they pertain to e-mails and electronically  
21 stored information from 2007 to the present. New Defendants proposed  
22 providing responses and unprivileged materials for the period between 1999 and  
23 January 1, 2007. The initial date, 1999, is the date proposed by Plaintiff. The  
24 ending date, January 1, 2007, is proposed by the New Defendants. New  
25 Defendants claim that January 1, 2007, is the end of what they describe as the  
26 "creative period" during which work on the *Jersey Boys* script was completed,  
27 because this is the period leading up to the New York opening of *Jersey Boys* on  
28 November 6, 2005. New Defendants propose that this limitation should be

1 subject to exceptions, described below, for certain categories of information on  
2 which discovery would be provided through the present.

3 8. New Defendants argue this temporal limitation is necessary to control time and  
4 costs in this litigation, particularly with regard to Brickman's and Elice's e-mails  
5 and electronically stored information ("ESI") from January 2007 to the present.  
6 As to e-mail from the "creative period" and those prior to January 1, 2007,  
7 Brickman and Elice represent they have produced all such responsive and  
8 unprivileged files on computers in their possession. The combined e-mail files  
9 of these New Defendants from January 1, 2007, to the present number in the  
10 thousands. The New Defendants represent that the bulk of this e-mail bears no  
11 relevance to this litigation, and that the files consist of personal messages, work  
12 on new and unrelated shows and projects, and "other e-mails" that are not  
13 organized. New Defendants claim that, of the files that mention *Jersey Boys*,  
14 many are incidental references relating to myriad travel and production issues  
15 which have no relevance to the creation or revision of the script. New  
16 Defendants also claim that many of the categories for which Plaintiff seeks  
17 communications are unlikely to be found in e-mail maintained by the two writers.

18 9. Given the scope of the Plaintiff's requests and the bulk of the e-mail  
19 communications, the Court finds that a temporal limitation should be imposed.  
20 The following factors support a temporal limitation on discovery in this case: (a)  
21 *Jersey Boys* opened on Broadway on November 6, 2005, and the New  
22 Defendants represent that this was the end of the "creative period" in which the  
23 writers developed and wrote the script for *Jersey Boys*; (b) subsequent changes to  
24 the script were minor and made to meet local production requirements such as  
25 time restrictions (*e.g.* the Las Vegas production had to be shortened).  
26 Additionally, script changes were made to make the script more understandable  
27 in the venue (*e.g.* to change phrases and names less recognizable to foreign  
28 audiences); (c) Msrs. Brickman and Elice represent that they have produced the

1 responsive e-mails and ESI they have for the period before January 2007; (d)  
2 Mssrs. Brickman and Elice state they both have on their present computers a  
3 large number of e-mails and other ESI from 2007 to the present (*i.e.*, early 2007  
4 to the present for Mr. Brickman; and April 2008 to the present for Mr. Elice) and  
5 that these e-mails of the past three-and-a-half years include numerous personal e-  
6 mails, numerous professional e-mails regarding a number of other shows that  
7 they have been working on, as well as numerous e-mails concerning *Jersey Boys*  
8 that would not likely have any bearing on the issues in this litigation; and (e) the  
9 New Defendants, among them Mssrs. Brickman and Elice, were added to this  
10 litigation in August 2008, and therefore, e-mails and other ESI after that date  
11 would include potentially privileged communications with counsel and/or among  
12 the New Defendants in aid of their joint defense.

13 10. Plaintiff argues that *Document Production Request Nos. 9 and 16*, as narrowed,  
14 are reasonably calculated to lead to admissible evidence, including subpart 7.  
15 With respect to subpart 7, Plaintiff's Second Amended Complaint ("SAC") is not  
16 limited in scope to conduct that occurred prior to its filing. The SAC alleges  
17 ongoing and expanding U.S. and foreign infringements by the New Defendants,  
18 including Defendants Brickman and Elice; seeks ongoing accountings of profits;  
19 requests injunctive relief from such ongoing infringements; and, expressly seeks  
20 these forms of relief, and declaratory relief, with respect to film adaptations of  
21 *Jersey Boys*, which it alleges formed part of the rights licensed or conveyed by  
22 Defendant DeVito to Defendants Valli and Gaudio. (*e.g.*, Dkt. #107, ¶¶ 60, 65-  
23 66, 80, 181, 183, 185-187, 194, 216-217, 231-232.) (*See also* Dkt. #107 at 84-  
24 85.)

25 11. Plaintiff also argues that her infringement claims against the New Defendants are  
26 not limited to actions for copying or adapting the Work, and the "creative period"  
27 during which *Jersey Boys* was written is not the only period relevant for  
28 potentially-responsive emails Defendants Elice and/or Brickman may possess.

1 The SAC includes actions for the unauthorized licensing and/or assignment of  
2 rights in the Work, including the issuance of such licenses for new U.S. and  
3 foreign *Jersey Boys* productions, and collateral goods, such as the *Jersey Boys*  
4 coffee table book and cast recording. (*e.g.*, Dkt. #107 at 84-85.) The actions  
5 against Defendants Brickman and Elice also encompass claims for contributory  
6 copyright infringement, in connection with these productions and collateral  
7 goods. (*Id.*, ¶¶ 227-235).

- 8 12. Plaintiff's counsel argued at the August 12, 2010 hearing, that Peter Bennett,  
9 attorney-in-fact for Defendants Valli and Gaudio, assisted Plaintiff in the early-  
10 phase of this action, before Defendants Brickman and Elice were added (*e.g.*,  
11 Dkt. #15 at *Ex. 11*), and defense counsel has disclosed, and is producing to  
12 Plaintiff, correspondence which indicates that New Defendants were aware of  
13 this action before they were joined, and engaged counsel, for purposes of this  
14 case.
- 15 13. Plaintiff agrees that certain categories of email communications specified in  
16 Plaintiff's revised production requests are less likely to exist after a certain date,  
17 and the Court finds that accommodations are appropriate, to reduce Defendants'  
18 burden of reviewing Defendant Elice's thousands of outstanding emails in search  
19 of potentially responsive documents.
- 20 14. Plaintiff contends temporal limitations for emails concerning the topics covered  
21 by the following subparts of Plaintiff's requests would be prejudicial: 3  
22 (regarding Defendants' compensation from *Jersey Boys*), 4 (concerning  
23 agreements regarding the *Jersey Boys* production, including those relating to the  
24 expansion thereof, which are likely to incorporate underlying rights in the Work),  
25 6 (regarding the locations at which *Jersey Boys* has been or will be performed,  
26 which is likely to reveal further conduct alleged to comprise infringements or  
27 generate equitable accounting obligations), 7 (concerning film adaptations of  
28 *Jersey Boys*, 8 (regarding the content of the *Jersey Boys* script, as further changes



1 are reasonably likely to be relevant to Plaintiff's claims), and 9 (concerning  
2 *Jersey Boys* revenues, profits, and expenses, including the individual revenues,  
3 profits, and expenses of Defendants Elice and Brickman). Plaintiff argues  
4 Defendants' production of communications responsive to these subparts should  
5 not be limited as to time.

6 15. The Plaintiff agrees that certain temporal limitations are appropriate for  
7 discovery of e-mails responsive to subparts 1, 2, 5, 10, 11, 12, 13 and 15.  
8 However, the Plaintiff proposes an August 18, 2008 cutoff, the date the First  
9 Amended Complaint was filed, for review and production, and that the Plaintiff  
10 have access to discovery of non-privileged e-mails responsive to the subparts  
11 after this date, through the use of search terms, mutually agreed-upon by the  
12 parties.

13 16. Plaintiff has articulated reasons why the discovery sought, without temporal  
14 limitations, is relevant and discoverable within the meaning of Rule 26(b)(1).  
15 The New Defendants have articulated reasons why a temporal limitation is  
16 reasonable. Applying the principals embodied in Rule 26(b)(2)(C), the Court  
17 will limit the discovery otherwise allowed by the FRCP finding that the  
18 discovery of some of the subparts of *Request No.s 9 and 16* Plaintiff seeks, even  
19 as narrowed, is unreasonably cumulative or duplicative, and that the burden and  
20 expense of the proposed discovery outweighs its likely benefit, considering the  
21 needs of the case, the amount in controversy, the parties' resources, the  
22 importance of the issues at stake in the action, and the importance of the  
23 discovery in resolving the issues. *See Fed.R.Civ.P. 26(b)(2)(C)*.

24 17. The Court finds that the request for communications relating to New Defendants'  
25 engagement to write *Jersey Boys* (No. 1) should be subject to a post-January 1,  
26 2007 time limitation. There is no reasonable expectation of locating  
27 communications relating to the writers' hiring more than two years after the play  
28 began production in La Jolla and well over a year after its Broadway opening.

- 1           18.    The Court finds that requests for communications relating to New Defendants’  
2                    compensation and income, revenue and expenses for *Jersey Boys* (Nos. 3 and 9)  
3                    should be subject to the proposed January 1, 2007 time limitation. Counsel for  
4                    the New Defendants has agreed that the underlying documents regarding these  
5                    topics will continue to be produced by Dodger Theatricals. Therefore,  
6                    production of communications regarding these topics post-January 1, 2007 from  
7                    Brickman and Elice is burdensome and duplicative.
- 8           19.    The Court finds that the request for communications relating to the locations and  
9                    dates of *Jersey Boys* performances (No. 6) should be subject to the proposed time  
10                  limitation. The court accepts representations made by defense counsel that the  
11                  locations and dates of these performances have been produced in numerous ways,  
12                  and that information will continue to be available. It is unnecessarily  
13                  burdensome and duplicative to compel New Defendants to produce post-January  
14                  1, 2007 communications on these topics.
- 15          20.    The Court finds that Plaintiff’s Complaint allegations “on information and  
16                  belief” are insufficient to support Plaintiff’s request for communications relating  
17                  to the possible adaptation of *Jersey Boys* into film (No. 7).
- 18          21.    As to the following requests, the Court finds that production of post-January 1,  
19                  2007 communication is appropriate and should be accomplished through the  
20                  application of search terms and parameters reasonably tailored to identify the  
21                  responsive communications: background information provided to either New  
22                  Defendant for his engagement to write *Jersey Boys*, including biographical  
23                  material (No. 2); agreements concerning *Jersey Boys* (No. 4); the adaptation or  
24                  referencing of other works referring to the Four Seasons in connection with the  
25                  writing of *Jersey Boys* (No. 5); the content of the *Jersey Boys* script and any  
26                  changes to it (No. 8); Rex Woodard (No. 10); the DeVito Autobiography (No.  
27                  11); this litigation (No. 12); biographies or autobiographies of the Four Seasons  
28                  (No. 13); books that primarily concern the Four Seasons (No. 14); and scripts or

1 treatments in which the Four Seasons are mentioned (No. 15). Counsel shall  
2 propose, agree on and apply a set of reasonable search terms that accomplish the  
3 limitations and direction provided in this order.

4 **II. Issues Addressed in Meet and Confer Sessions Conducted on July 30, 2010, and the**  
5 **Follow-Up Conferences of August 5 and August 6, 2010.**

6 **A. Discovery Concerning Other Copyright Litigations in Which New Defendants Are**  
7 **Involved.**

- 8 1. Certain New Defendants, namely, Defendants Elice, Brickman, Valli, Gaudio,  
9 and Dodger Theatricals, Ltd., are, or have been, parties to other copyright  
10 infringement litigations involving *Jersey Boys*, including *Sofa Entertainment v.*  
11 *Dodger Productions*, No. CV 08-02616 DMG (PJWx) (C.D. Cal.), and/or *Jersey*  
12 *Boys Broadway v. Gehling*, No. 1:10-cv-03060-RJS, (S.D.N.Y.). The case  
13 pending in the Southern District of New York also includes, as a party, Christian  
14 Hoff, whom Plaintiff asserts is a key witness in this case.
- 15 2. The subject matter of the *Sofa Entertainment* case in the Central District of  
16 California involved a “fair use” defense to a copyright infringement claim  
17 concerning the use of a clip of the Ed Sullivan Show. The Plaintiff believes  
18 discovery of this case is relevant because the New Defendants have also raised a  
19 fair use defense in this case. (Dkt. #319 at 24.) It was dismissed on a motion for  
20 summary judgment before the August 12, 2010 hearing. The case pending in the  
21 Southern District of New York, includes actions by New Defendants for  
22 copyright infringement against an allegedly competing production, in which the  
23 valuation of copyrighted songs performed in *Jersey Boys* is at issue, along with  
24 alleged appropriations of proprietary *Jersey Boys* staging elements. The New  
25 Defendants argue that neither case has any bearing on the copyrights that are the  
26 subject of this case.
- 27 3. The Court finds that the burden or expense of producing this proposed discovery  
28 outweighs its likely benefit.

1           **B.     The Provision of Privilege Logs.**

2           1.     Defense counsel have produced no privilege logs to date in response to any of  
3                     Plaintiff’s discovery requests, notwithstanding that certain of Plaintiff’s requests  
4                     would appear to encompass at least some information or documents protected by  
5                     the attorney-client privilege. Plaintiff requests that the Court order Defendant  
6                     Elice to produce a privilege log for all e-mails preceding the filing of the First  
7                     Amended Complaint, and for such later responsive e-mails as may be retrieved  
8                     by a search conducted on a mutually agreed-upon key word search. Plaintiff  
9                     agrees that the issue of privilege logs is not ripe for resolution with respect to  
10                    specific discovery requests.

11          2.     The New Defendants ask that the Court find that they have not waived the  
12                   attorney-client privilege by failing to produce a privilege document log to date  
13                   given the “breadth and specificity of documents requests.” The New Defendants  
14                   ask that the Court enter an order finding any direct communication New  
15                   Defendants have had with any attorney who represents any of the New  
16                   Defendants in this case are covered by the attorney-client privilege and are not  
17                   required to be identified in a privilege log. The New Defendants also ask that the  
18                   Court find that communications between New Defendants “that are in aid of the  
19                   defense and done in connection with requests from defense counsel” are covered  
20                   by the attorney-client privilege and need not be identified in a privilege log. The  
21                   New Defendants agree that any other documents (*i.e.*, those which do not involve  
22                   direct defense counsel communication, as to which New Defendants assert a  
23                   privilege, should be listed in a privilege log or other similar cost-effective  
24                   method provided by Rule 26.

25          3.     The Court will order that the parties produce a privilege document log which  
26                   complies with the requirements of Fed.R.Civ.P. 26(b)(5)(A) for documents  
27                   responsive to discovery requests which have been withheld as privileged.  
28                   Privilege document logs shall be served no later than thirty days from entry of

1 this order with respect to discovery responses served before October 30, 2010,  
2 and within thirty days of any additional or supplemental responses. Neither side  
3 shall be required to individually identify privileged communications with their  
4 counsel made on or after notice of this lawsuit.

5 **C. The Discovery of Financial Information Relevant to Damages, Including Details**  
6 **Regarding Revenues, Profits, and Expenses, and Communications With, and**  
7 **Reports to, Investors.**

- 8 1. Plaintiff seeks the identification of all investors and limited partners in the  
9 production companies that produce *Jersey Boys* in the U.S. and around the world.  
10 New Defendant Dodger Theatricals Ltd. is the general partner that acts for these  
11 production entities. The New Defendants argue that because these investors and  
12 limited partners are only passive investors in the productions, there is no need for  
13 them to be identified. The New Defendants agree that if the New Defendants are  
14 investors in a production company, they may be identified as such, but no other  
15 identification or discovery concerning these investors is required.
- 16 2. The Plaintiff contends it would be prejudicial to her to limit Plaintiff's discovery  
17 of financial information concerning revenues, expenses, and profits associated  
18 with *Jersey Boys* to Defendant Dodger Theatricals, Ltd. Plaintiff's claims for  
19 monetary damages and/or an equitable accounting are not limited to Defendant  
20 Dodger Theatricals and its related companies, but also encompass the profits of  
21 the individual New Defendants, Brickman, Elice, McAnuff, Valli and Gaudio.  
22 Plaintiff claims that financial material from Defendant Dodger Theatricals, may  
23 show the amounts it has paid these New Defendants, but will not establish all  
24 expenses and other costs which the individual New Defendants may seek to  
25 deduct from revenues they must account for and pay over to Plaintiff, if her  
26 causes of action succeed. Plaintiff contends that financial material from Dodger  
27 Theatricals will reflect profits the individual New Defendants have realized from  
28 the sale of collateral products, such as the *Jersey Boys* coffee table book, and the  
original cast recording, also encompassed by Plaintiff's claims, but covered by

1 separate agreements with unrelated companies.

- 2 3. The Court finds that limits are appropriate on Plaintiff's discovery concerning  
3 passive investors in *Jersey Boys*, but are not appropriate with respect to investors  
4 who have also been listed as producers of the play; who are, or have been,  
5 actively involved in the financial aspects of the production, and/or whose  
6 identities have already been publicized, through news article or interviews.

7 For good cause shown,

8 **IT IS ORDERED:**

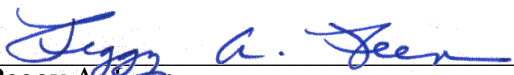
- 9 1. Defendants' *Motion for Protective Order* (Dkt. 298) is **DENIED**.
- 10 2. Plaintiff's *Cross-Motion to Compel* (Dkt. #326) is **GRANTED in part** and **DENIED in**  
11 **part**, consistent with the provisions of the body of this order.
- 12 3. Plaintiff's *Cross-Motion for Sanctions* (Dkt. #327) is **DENIED**.
- 13 4. Counsel for the parties shall serve opposing counsel with privilege document logs which  
14 fully comply with the requirements of Fed.R.Civ.P. 26(b)(5)(A) for documents produced  
15 on or before October 30, 2010, within thirty days of entry of this order.
- 16 5. Counsel for the parties shall serve privilege document logs for documents produced after  
17 October 30, 2010, within thirty days of additional or supplemental document responses  
18 and/or production.
- 19 6. Counsel shall not be required to list direct communications between the parties and their  
20 counsel made on or after notice of this litigation.
- 21 7. The Court will continue to monitor the progress of discovery in this case, and will  
22 convene monthly hearings for that purpose. The next hearing is scheduled for **January**  
23 **4. 2011 at 10:00 a.m., in Courtroom 3B**.
- 24 8. Counsel shall have until November 19, 2010, to exchange lists of depositions each side  
25 anticipates taking, and meet and confer concerning outstanding discovery disputes  
26 briefly addressed at the hearing conducted November 9, 2010.
- 27 9. Counsel shall have until December 3, 2010, to file motions to compel and motions for  
28 protective order concerning discovery disputes on which they have met and conferred

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and have reached an impasse. Responsive briefs are due fourteen days after service, and replies are due seven days after service.

10. Any request for relief in the motions decided in this order not specifically addressed is **DENIED.**

Dated this 12<sup>th</sup> day of November, 2010.

  
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Peggy A. Leen  
United States Magistrate Judge