

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD L. WHITE, P.C.,

Plaintiff,

v.

WEST PUBLISHING CORPORATION
d/b/a “West,” and REED ELSEVIER INC.
d/b/a LexisNexis,

Defendants.

ECF CASE

Civil Action No. 12-CV-1340 (JSR)

**DEFENDANT REED ELSEVIER
INC.’S FIRST SET OF REQUESTS
FOR ADMISSION TO PLAINTIFF
EDWARD L. WHITE, P.C.**

Pursuant to Rules 26 and 36 of the Federal Rules for Civil Procedure and the Civil Case Management Plan dated April 12, 2012, as amended, Defendant LexisNexis, a div. of Reed Elsevier Inc. (“LexisNexis”), hereby requests that Plaintiff Edward L. White, P.C. (“Plaintiff”) respond to the following requests for admission under oath and in full accordance with the applicable provisions of the Federal Rules of Civil Procedure on or before September 21, 2012.

DEFINITIONS

Plaintiff hereby incorporates by reference all definitions and rules of construction contained in Local Rule 26.3 and the Federal Rules of Civil Procedure and supplements those definitions and rules as follows:

1. “Amended Complaint” means the amended complaint filed by Plaintiff in the above-captioned action, dated June 26, 2012.
2. “Any” includes the word “all.” The word “all” is defined as in Local Rule 26.3(d)(1).
3. “Legal Document” means an attorney-authored brief, pleading or motion filed with a federal, state or municipal court.

4. “PACER” means the Public Access to Court Electronic Records service provided by the United States Courts, as described generally at www.pacer.gov.

5. “Plaintiff” means Edward L. White, P.C., individually and collectively, and all predecessors, subsidiaries, parents and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership relationships with Edward L. White, P.C. and others acting on behalf of Edward L. White, P.C.

6. “Person” is defined as in Local Rule 26.3(c)(6) and includes, but is not limited to, any natural person, firm, association, partnership, joint venture, corporation, business trust, banking institution, unincorporated association, government agency or any other entity, its officers, directors, partners, employees, agents and representatives.

7. “Works” means “Works” as defined in paragraph 4 of the Amended Complaint.

8. Nouns, whether singular or plural herein, shall be construed either as singular or plural as necessary to bring within the scope of these requests any documents or responses which might otherwise be construed to be outside their scope.

9. The past tense shall include the present tense and vice versa, as necessary, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

10. The remaining definitions and rules of construction of Local Rule 26.3 and the Federal Rules of Civil Procedure are hereby incorporated as though fully set forth herein.

11. Terms not defined herein, in the Federal Rules of Civil Procedure, or in Local Rule 26.3 shall have the meaning ascribed to them in the Amended Complaint; provided that if no meanings are ascribed to such terms, they shall have their usual and ordinary meanings.

INSTRUCTIONS

1. The period of time covered by these requests is from February 22, 2009, to the present, unless otherwise indicated.
2. Separate and complete responses are required of each request for admission.
3. Each paragraph herein shall be construed independently and not with reference to any other paragraph for the purpose of limitation.
4. If any objection is made to any request for admission herein, the objection shall state with particularity the basis therefore, and the request for admission shall be answered to the extent not objected to. If the objection is based on the attorney-client privilege or the work product doctrine, the objection shall identify the evidence being withheld as set forth herein, and shall in addition state all facts supporting such privilege, and identify each person having knowledge of the factual basis on which the privilege is asserted.
5. Plaintiff may not give lack of knowledge or information as a reason for failure to admit or deny unless Plaintiff states that it has made a reasonable inquiry to obtain the information or knowledge needed to admit or deny the request.
6. Plaintiff may not object to a request on the ground that an admission has been requested which presents a genuine issue for trial.
7. If Plaintiff's response to any of the following requests is anything but an unqualified admission, please explain fully the reason for the denial in response to each request.
8. If Plaintiff fails to admit the truth of any matter as requested, and LexisNexis thereafter proves the truth of the matter asserted, LexisNexis will apply to the Court for an order requiring Plaintiff to pay reasonable expenses incurred in making the proof, including reasonable attorneys' fees.

9. If Plaintiff finds the meaning of any term in these requests unclear, please assume a reasonable meaning, state what the assumed meaning is, and respond to the request according to the assumed meaning.

10. To the fullest extent required by Rule 26(e) of the Federal Rules of Civil Procedure, these requests for admission are continuing in nature and require supplemental or additional responses when Plaintiff obtains or becomes aware of any new, further or additional information responsive to these requests. Any newly discovered, corrected or additional information responsive to any request for admission shall be supplied within a reasonable time not to exceed ten (10) days after discovery of such information, and in all events, no later than thirty (30) days prior to the date of a hearing or trial.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that neither of the Works contains a notice on the document stating that the document is protected by copyright.

REQUEST FOR ADMISSION NO. 2:

Admit that neither of the Works contains a notice on the document indicating that the document is registered with the U.S. Copyright Office.

REQUEST FOR ADMISSION NO. 3:

Admit that neither of the Works contains a notice on the document prohibiting anyone from copying the document.

REQUEST FOR ADMISSION NO. 4:

Admit that the Works are publicly available to be copied via the Western District of Oklahoma Court Clerk's Office.

REQUEST FOR ADMISSION NO. 5:

Admit that the Works are publicly available to be copied via PACER.

REQUEST FOR ADMISSION NO. 6:

Admit that, prior to filing this lawsuit, Plaintiff has never made any request to any Person that the Works be removed or taken down from any source.

REQUEST FOR ADMISSION NO. 7:

Admit that Plaintiff has never made any request to any Person that any of Plaintiff's Legal Documents, other than the Works, be removed or taken down from any source.

REQUEST FOR ADMISSION NO. 8:

Admit that Plaintiff is not aware of any instance of an attorney paying another attorney for a license to reproduce and/or distribute copies of a Legal Document.

REQUEST FOR ADMISSION NO. 9:

Admit that Plaintiff is not aware of any Person licensing a Legal Document for reproduction and/or distribution.

REQUEST FOR ADMISSION NO. 10:

Admit that Plaintiff is not aware of any Person licensing a Legal Document for any purpose.

Dated: September 7, 2012
New York, New York

MORRISON & FOERSTER LLP

/s/ Craig B. Whitney

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