

**EXHIBIT A TO RANAHAH DECLARATION IN
SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Ranahan, Erin R.

From: Jonathan Zavin <jzavin@loeb.com>
Sent: Wednesday, November 16, 2016 3:38 PM
To: Ranahan, Erin R.; David Grossman
Cc: Leiden, Diana Hughes; Oki, Kelly; Jennifer Jason
Subject: RE: experts

Erin,

We are noticing our motion for December 19. We are not waiving our right to take expert depositions on a timely basis.

Jonathan

Jonathan Zavin, Esq.
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154
E-mail: jzavin@loeb.com
NY Tel: 212-407-4161
LA Tel: 310-282-2227
Direct Fax: 212-658-9105

-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Wednesday, November 16, 2016 5:13 PM
To: David Grossman
Cc: Leiden, Diana Hughes; Oki, Kelly; Jonathan Zavin; Jennifer Jason
Subject: Re: experts

Can you let us know ASAP your position on this? Obviously it will impact the hearing date we put on the motion we are filing today.

Thanks,

-Erin

Sent from my iPhone

On Nov 15, 2016, at 4:53 PM, Ranahan, Erin R. <ERanahan@winston.com<mailto:ERanahan@winston.com>> wrote:

David,

We pulled and reviewed the order, and see that Judge Klausner allowed expert depositions to occur after the discovery cutoff where he had specifically allowed parties to serve late expert reports beyond the FRCP 26 deadline. Even if Judge Klausner's rule was generally that the discovery cutoff did not apply to expert discovery, that does not alter the unreasonableness of the timing of your request. The bottom line is the experts are not available on the noticed dates, as you provided five business days-notice, and set them for Thanksgiving week. If you want these depositions to oppose summary judgment, please let us know if you will agree to the alternate motion for summary judgment schedule

we proposed, in which oppositions would be due 12/5 (instead of the Monday after Thanksgiving). Otherwise, we will find out availability of when the experts can be reasonably made available before then, but it will not be by next week.

Regards,

-Erin

Erin R. Ranahan

Partner

Winston & Strawn LLP

T: +1 (213) 615-1700

D: +1 (213) 615-1835

F: +1 (213) 615-1750

winston.com<<http://www.winston.com>>

[Winston & Strawn LLP]

From: David Grossman [mailto:dgrossman@loeb.com]

Sent: Tuesday, November 15, 2016 4:16 PM

To: Ranahan, Erin R. <ERanahan@winston.com<mailto:ERanahan@winston.com>>

Cc: Leiden, Diana Hughes <DHLeiden@winston.com<mailto:DHLeiden@winston.com>>; Oki, Kelly <KOKi@winston.com<mailto:KOKi@winston.com>>; Jonathan Zavin <jzavin@loeb.com<mailto:jzavin@loeb.com>>; Jennifer Jason <jjason@loeb.com<mailto:jjason@loeb.com>>

Subject: RE: experts

Erin,

You can pull the order and all the pleadings. If you do not withdraw your objections by 5 pm, I will move ex parte as soon as possible thereafter and notify Judge Klausner of your conduct.

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]

Sent: Tuesday, November 15, 2016 4:15 PM

To: David Grossman

Cc: Leiden, Diana Hughes; Oki, Kelly; Jonathan Zavin; Jennifer Jason

Subject: RE: experts

David,

Please send us the full Skidmore order and we will consider it.

Regards,

-Erin

Erin R. Ranahan

Partner

Winston & Strawn LLP

T: +1 (213) 615-1700

D: +1 (213) 615-1835

F: +1 (213) 615-1750

winston.com<<http://www.winston.com>>

[Winston & Strawn LLP]

From: David Grossman [mailto:dgrossman@loeb.com]

Sent: Tuesday, November 15, 2016 3:50 PM

To: Ranahan, Erin R. <ERanahan@winston.com<<mailto:ERanahan@winston.com>>>

Cc: Leiden, Diana Hughes <DHLeiden@winston.com<<mailto:DHLeiden@winston.com>>>; Oki, Kelly <KOKi@winston.com<<mailto:KOKi@winston.com>>>; Jonathan Zavin <jzavin@loeb.com<<mailto:jzavin@loeb.com>>>; Jennifer Jason <jjason@loeb.com<<mailto:jjason@loeb.com>>>

Subject: RE: experts

Erin,

Before we incur the cost of filing an ex parte application with Judge Klausner, I request that you reconsider your position. First, your position, that expert depositions had to be completed prior to your providing expert reports to Plaintiffs, is untenable. Second, the Federal Rules provide that a retained expert's deposition may only be taken after his or her report is provided. FRCP 26(b)(4). Defendants' expert reports were not provided until the evening of November 2, 2016. Finally, Judge Klausner has ruled on this precise issue, and has held that the discovery cutoff in his pre-trial scheduling order does not apply to preclude expert depositions, which may be taken following the service of expert reports. See *Skidmore v. Zeppelin et al.*, Case No. 2:15-cv-03462-RGK-AGR, Dkt. No. 216 ("The Court having received and considered the Application of defendants James Patrick Page, Robert Anthony Plant, Warner/Chappell Music, Inc., Atlantic Recording Corporation and Rhino Entertainment Company for an Order confirming that the February 11, 2016 discovery cut-off in this action does not apply to expert depositions and that defendants may proceed with their depositions of plaintiff's experts, and the papers filed in opposition and reply, and for good cause shown, IT IS HEREBY ORDERED that defendants' Application is GRANTED.") (emphasis added).

Please confirm that you will withdraw your improper objections by 5 p.m. today.

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077

Fax: 310.919.3943

From: David Grossman
Sent: Tuesday, November 15, 2016 3:23 PM
To: 'Ranahan, Erin R.'
Cc: Leiden, Diana Hughes; Oki, Kelly; Jonathan Zavin; Jennifer Jason
Subject: RE: experts

We will be seeking relief from the Court.

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Tuesday, November 15, 2016 3:22 PM
To: David Grossman
Cc: Leiden, Diana Hughes; Oki, Kelly; Jonathan Zavin; Jennifer Jason
Subject: RE: experts

David,

We are accepting service and wholly objecting to your ability to proceed with both of these depositions. Discovery is closed. Though at the outset of this case, Jonathan mentioned that we may want to agree to an earlier expert exchange schedule to allow expert depositions before the discovery cutoff, he never actually proposed such a schedule. Therefore, we served our reports consistent with the deadline provided as a default in the Federal Rules, which happened to fall on the last day of discovery. You did not produce an expert report at all.

There is no inherent right to take an expert deposition, especially after the discovery cutoff, and clearly Judge Klausner did not believe it necessary to add in a separate expert discovery cutoff to accommodate that. You are free on summary judgment to attempt to rebut the statements through documents and from non-experts, but we will not consent to these eleventh hour depositions.

Moreover, even if we were agreeing to submit to these belated depositions on short notice, because your side has refused to agree to any modified briefing schedule on summary judgment, we will be working next week on opposing your summary judgment motion, not to mention that it is Thanksgiving week, and neither expert is available on such short notice. It is entirely unreasonable to wait two weeks after you received the reports and after discovery is closed to suddenly attempt to schedule expert depositions two days before summary judgment briefs are due, during Thanksgiving week.

Plaintiffs will be free to question these experts in the event that we go to trial.

Regards,

-Erin

Erin R. Ranahan

Partner

Winston & Strawn LLP

T: +1 (213) 615-1700

D: +1 (213) 615-1835

F: +1 (213) 615-1750

winston.com<<http://www.winston.com>>

[Winston & Strawn LLP]

From: David Grossman [mailto:dgrossman@loeb.com]

Sent: Tuesday, November 15, 2016 3:05 PM

To: Ranahan, Erin R. <ERanahan@winston.com<<mailto:ERanahan@winston.com>>>

Subject: experts

Erin,

Yesterday I served you with subpoenas for Defendants' experts and asked you to confirm by noon today that you will be accepting service. Are you refusing to accept service on behalf of Defendants' experts?

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

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