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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WOODY ALLEN,

Plaintiff,

08 Civ. 3179 (TPG) (KNF)

-against-

AMERICAN APPAREL, INC.,

Defendant.

-- x

DEFENDANT AMERICAN APPAREL, INC.'S REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL

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I. INTRODUCTION

> "A lawsuit is supposed to be a search for the truth," and the tools employed in that search are the rules of discovery. Our adversary system relies in large part on the good faith and diligence of counsel and the parties in abiding by these rules and conducting themselves and their judicial business honestly.

Metropolitan Opera Ass'n, Inc. v. Local 100, Hotel Employees & Restaurant Employees Intl. Union, 212 F.R.D. 178, 181 (S.D.N.Y. 2003) (internal citation omitted).

Plaintiff's counsel have disregarded these basic principles that stand at the core of the judicial system and have misled the Court concerning the extent of their alleged "compliance" with their discovery obligations. By way of example only, beginning on page eight (8) of Plaintiff's opposition papers, Plaintiff's counsel devote an entire section to the notion that "Mr. Allen Has Produced All Documents Relating to Commercial Endorsements." Therein, Plaintiff's counsel repeat: "As was stated at the last Court Conference [on March 5, 2009], Mr. Allen and his representative have diligently sought to collect all documents . . . and have produced those documents." On page nine (9), Plaintiff's counsel state that this diligent search resulted in the production of documents relating to the two occasions on which Mr. Allen did television commercials in Italy (as well as documents regarding various offers which were never consummated).

What Plaintiff's counsel failed to advise the Court is that on April 13, 2009, well over a month after the last Court conference during which Plaintiff's failure to comply with discovery obligations was discussed, mere days before opening expert reports are due, and only <u>after</u> Defendant filed the instant Motion seeking to compel Plaintiff's compliance with his discovery obligations, Plaintiff <u>for the first time</u> produced documents concerning endorsement offers he had received. (Prior to this time, all other documents concerning endorsements or offers had been produced either by his manager or by his agent.) Among these documents is a request that

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Mr. Allen participate in an advertising campaign for the Empire State Development/*I Love New York* campaign – an endorsement opportunity never before disclosed, whether by Plaintiff, his manager or his agent (see Exhibit A submitted herewith) – and an iteration of a letter agreement negotiated on his behalf relating to a third endorsement Mr. Allen apparently agreed to do in Italy, this time for Bitter Campari, an alcoholic beverage. (The Campari term letter is marked "Confidential" and per the Protective Order cannot be publicly filed at this time.) Moreover, despite the fact that opening expert reports are scheduled to be submitted today and Plaintiff counsel's clear knowledge that these endorsement and advertising materials would most certainly be of interest to any expert, Plaintiff's counsel sent these documents by regular mail to the defense, who received them on Wednesday, April 15, 2009, at approximately the same time that we received Plaintiff's opposition papers claiming all documents concerning endorsements had been produced.[1] Given this series of events, one wonders whether, but-for the instant Motion to Compel, these documents that significantly undercut his position in this lawsuit concerning the value of a Woody Allen endorsement ever would have been produced.. Otherwise, the documents would have been produced timely in response to Defendant's document requests and subpoenas, before the last Court conference, immediately after the last Court conference or, at minimum, before the depositions of Mr. Tenenbaum (manager) and Mr. Burnham (agent) during which Plaintiff's counsel took the position that the only relevant matters of inquiry were the endorsement contracts Mr. Allen has signed and the endorsement offers he has received.

These documents illuminate Plaintiff's counsel's gamesmanship in another aspect as well. As explained further below, Plaintiff's counsel has taken the position that the duly-subpoenaed deposition of Leslee Dart, Plaintiff's publicist, should not proceed because,

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[1] It is puzzling why such important documents were transmitted by regular mail and not by e-mail or hand delivery, when it has been the practice of Plaintiff's counsel to serve papers primarily through e-mail transmission and hand delivery.

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according to Plaintiff's counsel, she does not have any knowledge of any of Mr. Allen's prior endorsements or any offers he has received. But within Plaintiff's last minute document production, which the undersigned received just three business days ago, is an email chain that makes clear that Leslee Dart not only has knowledge of the *I Love New York* advertising campaign advertisement Mr. Allen was asked to do, but also that Ms. Dart advised him that his involvement in the *I Love New York* campaign was not necessary and she would be "happy to turn it down." That Plaintiff's counsel can claim Ms. Dart is ignorant on these issues while at the same time just last week producing a document attesting to the contrary is astounding.

As set forth more fully below and as these two brief examples illustrate, Plaintiff's counsel has spent nearly six months setting up discovery roadblocks at every turn, without regard for the good faith and diligence that the discovery process expects of its participants. Not surprisingly, Plaintiff's opposition papers evidence a complete lack of understanding and applicability of basic legal principles underlying discovery, an increasingly regular habit of ignoring AA's requests and its discussions with AA's counsel when such ignorance is convenient for Plaintiff and his counsel, and blatant attempts to divert this Court's focus from AA's Motion. Indeed, and true to form, Plaintiff's counsel wrongly argues that "AA seeks to turn discovery into an unfettered exploration of Mr. Allen's family life, personal finances and career[,]" and claim that AA has issued "broad document requests to Mr. Allen and subpoenas to his agent, his business manager, his accountant, his attorneys, his publicist, and even going so far as issuing a subpoena to Mr. Allen's sister." (Pltf. Mem. at 2.) This charge is entirely baseless, and such misrepresentation of AA's trial strategy should not be countenanced.

To the contrary, and as set forth more fully below, every interrogatory, document request, and subpoena propounded on Plaintiff and his business associates is *directly related* to the

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allegations set forth in Plaintiff's Complaint, testimony given by Plaintiff or one of his associates in a deposition, or an objection or response to a discovery request. However, before reiterating the basis for its Motion, AA feels compelled to bring to the Court's attention certain distortions and misrepresentations perpetuated by Plaintiff's counsel, namely that AA seeks irrelevant personal information from Plaintiff in an attempt to intimidate. This is simply not the case.

Although Mr. Allen's own attorneys acknowledged that Mr. Allen's reputation has been damaged by personal scandals, Mr. Allen's personal scandals and related information is not a part of AA's defense to liability.[2] If a damages analysis should become relevant in the trial of the instant matter, experts in intellectual property valuation will testify as to the fair market value of a Woody Allen endorsement in light of prior Woody Allen endorsement deals and offers, Allen's declining popularity in the United States, his limited appeal, the effect of scandal upon the fair market value of a celebrity endorsement and other relevant factors. Such an analysis is relevant and may be necessary in light of Mr. Allen's outrageous demand of $10,000,000.00 for images on limited billboards/banners, that were taken down after being displayed for less than one week, and unnoticed website postings that were viewable for less than one month. In fact, Mr. Allen himself, in his deposition, acknowledged that scandal may impact the value of a celebrity endorsement:

> Q. Would you agree with me that a public awareness of a scandal in a celebrity's life may decrease the fair market value of his or her endorsement?
>
> ****
>
> A. I would say the same answer to that, it may and it may not. You know, but it may.

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[2] Counsel for Mr. Allen reluctantly acknowledged that Mr. Allen's reputation was previously damaged by indicating (wrongly) that AA intends to tarnish Allen's reputation a second time.

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(Ex. C, Allen Depo at 156:12-20.) In fact, Mr. Allen's own lawyers indicate that Mr. Allen is not the "appropriate person" to discuss the value of his endorsement.

As an initial matter -- and not surprisingly -- in his cover letter to this Court enclosing Plaintiff's opposition to AA's Motion, Plaintiff's counsel advises this Court of "another pending discovery matter", AA's duly-subpoenaed depositions of Plaintiff's publicist, Leslee Dart, and Letty Aronson, who Plaintiff's counsel misleadingly characterizes as Mr. Allen's sister. While Ms. Aronson is, in fact, Mr. Allen's sister, she also produces Plaintiff's movies and, according to Plaintiff's own testimony, Plaintiff "consult[]s with [Ms. Aronson] about the serious decisions of my career . . . ." (Ex. C, Allen Depo. at 33:23-34:18.) Moreover, Plaintiff *himself* testified at his deposition that Ms. Aronson contributed to Plaintiff's conclusion that AA's use of his image "can only have a detrimental effect on all the important aspects of [Plaintiff's] career . . . ." (Ex. C, Allen Depo. at 33:7-34:18.)

Similarly, Ms. Dart has recently issued public statements on Plaintiff's behalf related to this lawsuit; it stands to reason that she has discussed the instant suit with Plaintiff, which communications are discoverable. Moreover, Ms. Dart has commented on allegations that Plaintiff was "box-office poison" following his highly publicized sex scandal and custody battle involving himself, Mia Farrow, and Farrow's adopted daughter, Soon-Yi Previn (Ex. D). Plaintiff's counsel surely is aware of Ms. Dart's comments in this regard as they relate to a lawsuit in which they defended Mr. Allen. (Ex. D.) Plaintiff's counsel has obscured this and other discoverable information at every turn. Duly-issued subpoenas seeking discoverable information is not harassment, and counsel's attempts to block those subpoenas and to ignore other discovery obligations should not be ignored.

Relatedly, AA objects to any suggestion by Plaintiff and/or his counsel that AA has

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engaged in a "harassing" course of discovery geared toward exposing the sensational details of Plaintiff's personal life. To the contrary, throughout the course of this litigation, AA and its counsel has limited its discovery requests to those professionals upon whom Plaintiff relies for business advice -- Stephen Tenenbaum, his personal manager; John Burnham, his agent; Joel Faden, his business manager and accountant; Ms. Dart, his publicist; and Ms. Aronson, his producer. In fact, AA would be completely justified in issuing a subpoena for deposition to Plaintiff's wife, Ms. Previn, given that during his deposition, Plaintiff testified that it was Previn who advised him that AA's advertisements were "sleazy" and that she had a "very, very poor opinion" of an AA store, which opinions contributed to Plaintiff's opinion of AA and which he uses to justify his positions in this lawsuit. (Ex. C, Allen Depo. at 142:22-143:15.) Despite this, AA has intentionally refrained from seeking discovery from Plaintiff's wife, in an effort to limit its inquiries to the business side of Plaintiff's life. This is, of course, different from the fact that Mr. Allen's professional career and the demand for his celebrity endorsement have been adversely affected by the significant bad press Mr. Allen has received since his relationship with Ms. Previn first was discovered – facts which must be considered if assessing the alleged damages in this case. Consequently, any contention that AA has engaged in a discovery plan that is harassing and invasive is without basis; AA seeks only information relevant and discoverable in light of the serious (but false) allegations lodged against AA.

II. ARGUMENT

A. AA's Requests for Communications (Sections A, E, K)[3]

Plaintiff and his counsel have repeatedly -- and improperly -- employed the attorney-client privilege to prevent the disclosure of communications, and documents evidencing such

[3] In an effort to streamline discussion of the issues raised in the instant Motion, AA has combined its outstanding request into categories where possible.

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communications, between Allen and his representatives -- Tenenbaum, Burnham, and Faden -- regarding the instant lawsuit. For instance, at Tenenbaum's deposition, Plaintiff's counsel objected and instructed Tenenbaum not to answer questions seeking the substance of communications between Tenenbaum and *Allen* regarding this matter. Finally, Plaintiff has flatly rejected AA's demand that Plaintiff produce a privilege log, as it is required to do under Federal Rule of Civil Procedure 26(b)(5). In his opposition papers, Plaintiff and his counsel baldly assert that all such communications are protected, and that Plaintiff has no obligation to produce a privilege log because "no documents responsive to non-objectionable requests have been withheld . . . ." (Pltf. Mem. at 4, 7-8, 11.) This statement is meaningless since Plaintiff's counsel objected to every single document request and, therefore, in counsel's view there are no "non-objectionable requests." If documents responsive to a request exist but have been withheld from production because they allegedly are privileged, then a log must be produced.

Plaintiff and his counsel clearly overstate the limited scope of the attorney-client privilege, which scope has been clearly defined by this Court:

> The attorney-client privilege affords confidentiality to communications *among clients and their attorneys*, for the purpose of seeking and rendering an opinion on law or legal services, or assistance in some legal proceeding, so long as the communications were intended to be, and were in fact, kept confidential. . . . The privilege is among the oldest of the common law privileges and "exists for the purpose of encouraging full and truthful communication between an attorney and his client." . . . However, because the privilege "stands as an obstacle of sorts to the search for truth," it must be applied "only to the extent necessary to achieve its underlying goals." . . . "The burden of establishing the existence of an attorney-client privilege, in all of its elements, rests with the party asserting it." . . . Where a communication between client and attorney does not reveal any confidential matters, the communication is not privileged.

Urban Box Office Network, Inc. v. Interfase Mgrs., L.P., 2006 WL 1004472, *2 (S.D.N.Y., April

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17, 2006) (internal citations omitted) (emphasis added).

At least in part, the objections of Plaintiff and his counsel to these communications miss the mark. Namely, in his opposition papers, Plaintiff argues that communications between Plaintiff's *counsel* and Tenenbaum, Plaintiff's business manager, are protected under Plaintiff's attorney-client privilege. There are, at minimum, two glaring problems with Plaintiff's position. First and foremost, Plaintiff and his counsel wholly ignore the fact that AA seeks discovery of communications between *Plaintiff* (as opposed to Plaintiff's counsel) and Tenenbaum that took place *outside* the presence of counsel, which cannot be protected by any interpretation of the attorney-client privilege. Plaintiff and his counsel fail to acknowledge this request, much less address why it should not be required to produce such communications, an omission that AA submits confesses the weakness of Plaintiff's position. Secondly, as set forth above and in AA's initial memorandum of law, *Plaintiff has the burden of establishing that a communication is privileged.* AA does not quibble with Plaintiff's position that where communication between counsel and a client's representative is *necessary* to the provision of legal advice, such communications are protected by the attorney-client privilege. However, Plaintiff and his counsel have not established this, as it is their burden to do; apparently, they would prefer that AA and this Court simply take their word for it. The conclusory contentions of Plaintiff and his counsel that a communication or document is protected by the attorney-client privilege cannot satisfy Plaintiff's burden in this regard. *von Bulow v. von Bulow*, 811 F.2d 136, 146 (2d Cir. 1987) ("[The burden of establishing the attorney-client privilege] is not, of course, discharged by mere conclusory or *ipse dixit* assertions, for any such rule would foreclose meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed.")

To this point, neither Plaintiff, nor Plaintiff's counsel, nor Tenenbaum have made any

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effort to establish the existence of the privilege here, and unless and until they do so, such documents should be produced, and Tenenbaum should be required to appear for a continuation of his deposition to respond to questions on this subject. *See Sicurelli v. Jeneric/Pentron, Inc.*, 2005 WL 3591701, *9 (Dec. 30, 2005, E.D.N.Y.) (ordering that witnesses be re-deposed where witnesses' counsel improperly instructed witnesses not to answer).

B. <u>AA's Requests Regarding Endorsements and Appearances (Sections B, C)</u>

Additionally, AA seeks production of documents by Allen and his representatives concerning commercial endorsements and public appearances offered or made by Plaintiff. Plaintiff and his counsel maintain that they have complied with AA's requests for documents related to Plaintiff's endorsements. They further characterize AA's requests for documents related to appearances as "overbroad, invasive, and hav[ing] no colorable nexus to the matters in dispute." (Pltf. Mem. at 6.) Given that the value that Plaintiff can command for his endorsement is an issue central to this case, the value that Plaintiff has been offered and paid for past endorsements and appearances, as well as the nature and content of those endorsements and appearances is well within the scope of discoverable information. *Sokol v. Wyeth, Inc.*, 2008 WL 3166662, *3 (S.D.N.Y., Aug. 4, 2008) ("at the pretrial discovery stage of a litigation, relevancy, as it relates to information sought to be disclosed, is broadly construed and incorporates information which is not admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.")

Although Plaintiff's counsel represents to the Court that they have produced all documents related to commercial endorsements offered or done, recent conversations with counsel confirm this is not the case. (Aff., ¶ 10.) To the contrary, Plaintiff's counsel acknowledged that they had located a fully-executed contract, which had not been produced

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previously, and believed that they had a copy of at least one of the endorsements Allen had done previously, which also had not been produced, but were working on how to copy that endorsement onto a media which could be better displayed. (Aff., ¶ 11.) Once again, Plaintiff's counsel should have been forthcoming with these materials without AA filing a motion to compel, particularly when these issues were raised in the informal discovery conference. AA notes for the record that its counsel and Plaintiff's counsel have recently discussed Plaintiff's production of additional documents related to Plaintiff's commercial endorsements, which AA appreciates. However, it should not have taken a motion to compel for Plaintiff's counsel to be forthcoming with these materials.

Finally, Plaintiff's position that AA's request for information related to Plaintiff's appearances is "overbroad [and] invasive" disregards discussions between counsel for the parties, during which counsel for AA has made clear that AA only seeks information related to instances in which a private company has engaged Plaintiff to appear to promote a product or to perform. (Aff., ¶ 9.) Stated differently, AA has put to rest any suggestion that Plaintiff need produce documents concerning press junkets or other promotions of his films. Plaintiff's agent, John Burnham, testified that the private personal appearances about which AA has sought to discover information qualify as "endorsements". (Ex. E, Burnham Depo. at 53:19-54:6.) AA presumes that, at a minimum, Plaintiff's publicist would have documents related to such appearances, which documents would be within Plaintiff's possession, custody or control, and which documents have not been produced (by Plaintiff or by his publicist, who remains subject to a subpoena duces tecum).

C. <u>AA's Requests for Financial Documents (Section I)</u>

Plaintiff and his counsel offer an impassioned objection to AA's requests for documents

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related to Plaintiff's income and profits, asserting that such requests are "vexatious and harrassing," "offensive and illogical," and "invasive". (Pltf. Mem. at 9-10.)

As an initial matter, AA's requests for documents concerning Plaintiff's income and renumeration over the years, as well as the profitability of his films, are all directly related to Plaintiff's claim for $10 million in damages. Simply put, AA seeks such documents to determine whether the damages Plaintiff claims have any factual basis. In response, Plaintiff and his counsel contend that AA's requests ignore "his past 20 years of filmmaking, countless accolades, and Mr. Allen's inarguable and continuing esteem in the entertainment community." Plaintiff further contends that AA has never agreed to narrow any of these requests.

As to Plaintiff's first objection, AA does not dispute that Plaintiff is a well-known filmmaker with an Academy Award to his credit. However, Plaintiff and his counsel apparently expect AA and this Court to accept such "accolades" and "esteem", without more, as proof of Plaintiff's value to an advertiser. This unwarranted leap can only be bridged by the financial documents that AA seeks.

As to Plaintiff's second objection, AA has in fact narrowed its requests regarding the profitability of Plaintiff's films to only box office receipts, tickets sold, DVD sales, and the like. (See Def. Mem. at 13 and Ex. L to Declaration of S. Slotnick.) It is noteworthy that Plaintiff and his counsel do not dispute that such information is within Plaintiff's possession, custody and control, as Tenenbaum testified during his deposition. (Ex. F, Tenenbaum Depo. Tr. at 41:6-15.) Consequently, Plaintiff and his representatives should be ordered to produce these documents.

D. <u>AA's Requests for Documents Related to Prior Litigation (Section D).</u>

Plaintiff and his counsel again misconstrue AA's pending requests for documents related to prior legal actions that Plaintiff had threatened or filed for the use of his image or likeness, or

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the alleged infringement of his claimed intellectual property rights. Specifically, Plaintiff and his counsel submit that AA has demanded "complete litigation files" and have refused to consider narrowing its requests "in any meaningful way." (Pltf. Mem. at 7.) As AA indicated in its supporting memorandum, during the parties' meet and confer conferences, AA indicated that it only seeks documents related to those cases -- such as transcripts of Plaintiff's deposition testimony -- that are not available in the public record. (Def. Mem. at 9; Aff., ¶ 12.) Tellingly, Plaintiff and his counsel do not dispute that such documents are discoverable. *See Carter-Wallace, Inc. v. Hartz Mtn. Indus., Inc.*, 92 F.R.D. 67 (S.D.N.Y. 1981); *Repka v. Arctic Cat, Inc.*, 300 A.D.2d 1019, 1020, 753 N.Y.S.2d 635, 635 (App.Div. 4th Dep't 2002). Instead, they merely reiterate their illogical position that AA may obtain these documents from the public record. Consequently, Plaintiff should be ordered to produce these documents.

E. AA's Requests for Documents Related to Plaintiff's Public Image, Persona or Reputation (Section J)

Plaintiff and his counsel object to AA's requests for documents related to Plaintiff's public image, persona and/or reputation, on the grounds that the request is "impossibly broad, unlimited to time frame, and ostensibly called for Mr. Allen to produce [] virtually every document about his career . . . ." (Pltf. Mem. at 10.)

Plaintiff and his counsel fail to recognize that such request was not conjured by AA out of thin air; instead, it resulted directly from Plaintiff's deposition testimony that he is a "special kind of entity" and a "special taste". Plaintiff and his agent, John Burnham, espouse the position that Plaintiff's standing as a "special taste" enhances his commercial value; as Burnham suggested, Plaintiff status as the advertising equivalent of "the only house in the Hamptons" could drive up his price. Whether this is true remains to be seen and can be tested and examined through the documents AA seeks. Such discovery is relevant and should be produced.

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F. **<u>AA's Request That Plaintiff Identify Offensive Advertisements (Section L).</u>**

Plaintiff and his counsel object to AA's request that Plaintiff identify which advertisements of AA he believes were "sleazy" and "infantile", on the grounds that Plaintiff's counsel has informed AA's counsel that the advertisements to which Plaintiff referred were from AA's own production, which documents Plaintiff should not be required to "re-produce".

The position taken by Plaintiff and his counsel on this issue would be well taken, if Plaintiff's deposition testimony did not directly contradict it. Specifically, when asked at deposition which advertisements he found to be "sleazy" and "infantile", Plaintiff stated that he could not recall them, *but that he had given those advertisements to his counsel.* (Ex. C, Allen Depo. at 143:6-143:15; 144:14-145:25.) Plaintiff *did not* testify that he had seen these advertisements when reviewing AA's document production. Had he so testified, AA's counsel would have had the opportunity to present such advertisements to Plaintiff for his review.

Moreover, the objection tendered by Plaintiff and his counsel is legally unsound. Unless it is excused by a court order, "a requested party must provide relevant discovery *regardless of whether it is already available to the requesting party.*" *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 240 (W.D.N.Y.1998) (citing *Westhemeco v. New Hampshire Ins. Co.*, 82 F.R.D. 702, 710 (S.D.N.Y.1979) (emphasis added)). Consequently, AA respectfully submits that Plaintiff should be required to identify, by Bates number(s), which advertisements in AA's production he finds to be "sleazy" and/or "infantile", and if additional such advertisements exist that have not been produced, Plaintiff should be ordered to produce such advertisements.

G. **<u>AA's Requests to Plaintiff's Accountant, Joel Faden (Sections F, G and H).</u>**

Plaintiff and his counsel object to AA's efforts to obtain discovery from and take the deposition of Joel Faden, Plaintiff's business manager and accountant, on several grounds, all of

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which are unavailing. First, Plaintiff and his counsel submit that responsive documents in Faden's possession -- "a few pages of self-explanatory payment receipts" -- have been produced *by Plaintiff*, complete with Plaintiff's Bates number. Second, Plaintiff and his counsel submit that Faden's deposition has never been noticed, and was wholly unnecessary, given that Faden had only a "few pages" of responsive documents.

As to the first objection, AA issued a subpoena to Faden on January 6, 2009, which subpoena scheduled his deposition for February 18, 2009. Subsequent to the issuance of this subpoena, counsel for AA sought to schedule Faden's deposition at most, if not all, of their meet and confer conferences with Plaintiff's counsel, to no avail. (Aff., ¶ 13.) After these discussions, AA's counsel cannot conceive how Plaintiff's counsel was unaware of AA's duly-subpoenaed deposition. (In fact, Plaintiff's counsel accepted service of the subpoena on his behalf.)

As to the second objection, this is not the first time Plaintiff's counsel has attempted to persuade AA that the deposition testimony sought was a waste of time. Previously, Plaintiff's counsel encouraged AA to forego the deposition of John Burnham for this very reason. During that deposition, however, AA obtained a wealth of information, significant portions of which are directly contrary to positions Mr. Allen has espoused in this case. This simply goes to show that AA should not be expected to simply accept counsel's representations regarding what a witness does or does not know. Moreover, whether one has maintained documents on a subject often has little correlation to the knowledge one possesses on that same subject. Stated differently, simply because Mr. Faden may not have a document that professes the value of a Woody Allen endorsement does not mean that he has no knowledge related to that issue through, for example, discussions with Mr. Allen or others on that or related subjects. This information is discoverable, and his deposition should be scheduled forthwith.

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H. AA's Requests for Information Related to Attorneys' Fees (Section M)

AA agrees that consideration of Plaintiff's claims for attorneys' fees are premature. AA submits that, because this issue is premature, this Court should issue an order prohibiting Plaintiff and his counsel from mentioning, referencing or in any way seeking as damages Plaintiff's costs or attorneys' fees at the initial trial of this matter.

III. CONCLUSION

For the foregoing reasons, AA respectfully moves this Honorable Count to enter the proposed Order annexed to AA's Motion.

Dated: April 20, 2009
New York, New York

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply Brief in Support of Defendant American Apparel, Inc's Motion to Compel** has been served via ECF and by first class U.S. mail, postage prepaid, this 20th day of April, 2009 upon the following counsel of record for Plaintiffs:

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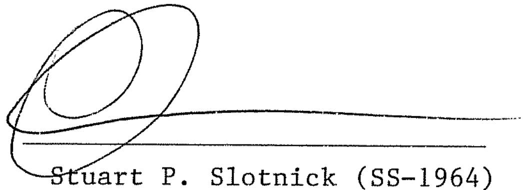

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