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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 SOUNDGARDEN, a Partnership; TOM
16 WHALLEY, as Trustee of the Afeni
Shakur Trust; JANE PETTY; STEVE
17 EARLE, individually and on behalf of
all others similarly situated,

18 Plaintiffs,

19 v.

20 UMG RECORDINGS, INC., a
Delaware corporation,

21 Defendant.
22

CASE NO. 2:19-cv-05449-JAK-JPR

**JOINT STIPULATION REGARDING
PLAINTIFFS' THIRD MOTION TO
COMPEL DISCOVERY FROM
DEFENDANT**

**[DISCOVERY DOCUMENT:
REFERRED TO MAGISTRATE
JUDGE JEAN P. ROSENBLUTH]**

Class Cert. Mot. Due: Mar. 31, 2020
Fact Discovery Cutoff: Sept. 14, 2020
Pretrial Conference: TBD
Trial Date: TBD

Hearing:

Date: March 5, 2020
Time: 10:00 a.m.
Place: Courtroom 690
Roybal Federal Building and
United States Courthouse
255 E. Temple St.
Los Angeles, CA 90012
Judge: Hon. Jean P. Rosenbluth

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1 Pursuant to Federal Rules of Civil Procedure 33, 34, and 37, and Local Rule 37-
2 2.2, Plaintiffs Soundgarden, Tom Whalley, Jane Petty, and Steve Earle submit this Joint
3 Stipulation regarding their Third Motion to Compel Discovery from Defendant UMG
4 Recordings, Inc. (“UMG”). Specifically, Plaintiffs move to compel UMG to fully
5 answer their Interrogatory No. 1 and to produce all documents responsive to their
6 Demands for Production (“Demands”) Nos. 8, 9, 16 and 41. The parties have met and
7 conferred regarding all of these discovery requests, and about UMG’s written objections
8 and responses to the requests at issue. The parties are unfortunately unable to resolve
9 their disputes and require Court intervention.

10 **INTRODUCTORY STATEMENTS**

11 **A. Plaintiffs’ Introductory Statement**

12 This case is about a June 1, 2008 fire on an NBCUniversal (“NBCU”) lot that
13 destroyed numerous historically- and economically-significant original master
14 recordings. In 2010, then-counsel for UMG wrote a letter to NBCU stating, in relation
15 to one of the two prior disputes at issue here, that UMG had conducted a “substantial
16 investigation of the assets lost in the fire,” that the investigation found “UMG lost more
17 than 118,000 original music recordings dating back decades,” and that UMG had “thus
18 identified the assets that were lost.” UMG and NBCU later reached a confidential
19 settlement. UMG also settled an insurance coverage dispute related to the fire with AXA.

20 Plaintiffs’ Interrogatory No. 1 sought information about what master recordings
21 were actually lost in the fire. This information is relevant because, amongst other
22 reasons, UMG apparently will contend what was *actually* lost in the fire is somehow
23 different from what UMG previously *told* NBCU and AXA was lost. UMG raised
24 improper objections to this relevant discovery request, and, purportedly subject to those
25 objections, only provided Plaintiffs with an incomplete and evasive answer to the
26 question posed. Fed. R. Civ. P. 37(a)(4) (“[A]n evasive or incomplete disclosure,
27 answer, or response must be treated as a failure to disclose, answer, or respond.”).

1 There were *nearly 17,000* unique artist names on the list of purportedly lost
2 original music recordings UMG provided to NBCU and AXA when UMG sought to and
3 did monetize those recordings, and those names were reproduced in this case in a
4 document Bates stamped as UMG_SG-0000032. Those names included Tupac Shakur,
5 Tom Petty, and Steve Earle, and the names of many other prominent recording artists
6 such as: Aaron Neville, Al Green, Albert Lee, Andy Summers, Antonio Carlos Jobim,
7 Arthur Lee, Barry White, Bauhaus, Bill Withers, Blues Traveler, Booker T. Jones, Burt
8 Bacharach, Cannonball Adderley, Captain & Tenille, Captain Beefheart & His Magic
9 Band, Cat Stevens, Chuck Berry, Dennis Brown, Devo, Elvis Costello & The
10 Attractions, Elvis Presley, Extreme, Fairport Convention, Flying Burrito Brothers/Gram
11 Parsons, George Harrison, Gerry Mulligan, Gin Blossoms, Herb Albert & The Tijuana
12 Brass, Human League, Humble Pie, Ike & Tina Turner, Janet Jackson, Jim Carroll,
13 Jimmie Rodgers, Jimmy Cliff, Joan Baez, Joe Cocker, Joe Jackson, John Cale, Jonny
14 Lang, Lesley Gore, Liza Minnelli, Lou Reed, Milton Nascimento, Monster Magnet,
15 O.M.D., Oingo Boingo, Paul Desmond, Peggy Lee, Peter Frampton, Phil Ochs, Procol
16 Harum, Quincy Jones, Richie Havens, Rick Wakeman, Robyn Hitchcock & The
17 Egyptians, Run D.M.C., Sergio Mendes, Simple Minds, Soul Asylum, Squeeze, Status
18 Quo, Sting, Styx, Supertramp, The Carpenters, The Coup, The Cure, The Feelies, The
19 Go-Go's, and The Police.

20 In stark contrast, UMG's response to Interrogatory No. 1, after reciting a host of
21 improper objections and caveats, identifies *just 19 artists* whose "original master
22 recordings"¹ UMG contends "were affected" by the fire. The only artists listed in the
23 response prepared for this litigation (all of whom also appear on UMG_SG-0000032)
24 are: ...And You Will Know Us by the Trail of Dead, Beck, Bryan Adams, David
25 Baerwald, Elton John, Jimmy Eat World, Les Paul, Michael McDonald, Nirvana, Peter

26 _____
27
28 ¹ Even if not every original music recordings listed in documents provided to
NBCU/AXA was an "original master recording," the gap between UMG's prior list of
17,000 artists and its new list of 19 is so broad as to call the new response into question.

1 Frampton, R.E.M., Sheryl Crow, Slayer, Sonic Youth, Soundgarden, Suzanne Vega,
2 Surfari, White Zombie, and Yesterday & Today (also known as Y&T).

3 UMG's objections and caveats to Interrogatory No. 1 suggest that UMG omitted
4 from its new list the names of artists whose recordings UMG contends that it has not yet
5 *reconfirmed* as lost *after* the NBCU/AXA disputes were resolved and money received.
6 That is completely improper discovery gamesmanship and, indeed, logically backwards.
7 If UMG determined artists' recordings were lost during a prior investigation, it cannot
8 now deny its prior representations without a specific factual basis for the denial. That is
9 particularly true where UMG's objections to Interrogatory No. 1 make clear that the
10 company has no current plans to complete a full investigation during the course of
11 discovery in this case—which would have to be done in order to conclusively deny its
12 prior statements to other litigation adversaries about what was lost in the fire.

13 In short, UMG cannot have it both ways. UMG told prior litigation adversaries
14 that nearly 17,000 artists' original music recordings were lost. If UMG is unwilling to
15 live with its prior representations—by listing in response to Interrogatory No. 1 all the
16 artists from the prior list whose listed works included “original master recordings”—
17 then it must respond fully to Interrogatory No. 1, rather than undertaking only a selective
18 review of past conclusions and cabin the answers with meritless objections.

19 The two other disputes raised in this motion to compel are straightforward. First,
20 Plaintiffs' Demands Nos. 8 and 9 seek highly relevant information that can be produced
21 with no undue burden: The transcripts of all depositions taken in the prior NBCU
22 litigation. UMG has agreed to cherry-pick what it will and won't produce, agreeing only
23 to produce two of these transcripts² and also agreed to provide a list of the rest to
24 Plaintiffs. But with less than two months to go before the current class certification
25 deadline and with the case proceeding through merits discovery as well after UMG's
26

27 ² One of the deposition transcripts that UMG has now agreed to provide Plaintiffs is that
28 of Larry Gerbrant, an expert witness from the NBCU case. This specific transcript was
requested in separate Demand No. 7, which UMG had previously objected to but has
since withdrawn.

1 motion to stay was denied, there is no reason for UMG to wait any longer before
2 producing *all* of these transcripts. The Court should order UMG to reproduce all of these
3 transcripts quickly, just as it ordered UMG to reproduce all its productions to NBCU in
4 the same prior litigation.

5 Second, Plaintiffs’ Demands Nos. 16 and 41 seek all of the recording agreements
6 that are associated with any of the original music recordings listed in the list of lost
7 original music recordings produced to NBCU/AXA, as well as those associated with
8 what UMG now claims were *actually* lost recordings, *i.e.*, those that were already listed
9 in the existing response to, or that will soon be listed in UMG’s forthcoming complete
10 response to, Interrogatory No. 1. UMG has produced a database of some recording
11 agreements previously exchanged with NBCU, but it refuses to confirm whether the
12 database includes *all* the requested contracts. During the meet-and-confer process, UMG
13 took the position for class certification purposes that Plaintiffs may rely on a partial
14 sampling of contracts that UMG chooses to produce, but of course that is akin to having
15 the fox guard the henhouse, and UMG has not provided any principled reason, other than
16 its say-so, as to why it will and won’t produce some contracts for its hand-picked
17 sampling approach. It is UMG’s burden, not Plaintiffs’, to ensure that all of these highly
18 relevant agreements have been produced.

19 **B. Defendant’s Introductory Statement**

20 Plaintiffs’ demand that UMG identify—via sworn interrogatory and under penalty
21 of perjury—“all artists who had any master recordings damaged or lost in, by, or as a
22 result of the June 1, 2008 fire on the NBCUniversal lot” essentially requires UMG to
23 conduct anew a thorough, worldwide investigation of *all* its musical assets and
24 associated recordkeeping related to *thousands* of artists across multiple secure locations
25 in the United States and United Kingdom at extraordinary and unprecedented burden
26 and expense. Under Rule 33, a responding party “must furnish information that is
27 *available to it* and that can be given *without undue labor and expense.*” Wright & Miller,
28 Fed. Prac. & Proc. § 2174 (3d ed.) (emphasis added). Parties are “not required to conduct

1 extensive research in order to answer an interrogatory,” *Gorrell v. Sneath*, 292 F.R.D.
2 629, 632 (E.D. Cal. 2013), and “interrogatories that require a party to make extensive
3 investigations, research, or compilation or evaluation of data for the opposing party”—
4 as Interrogatory No. 1 undoubtedly does—“are in many circumstances,” as here,
5 “improper.” *Wright & Miller, supra*, § 2174.

6 Plaintiffs misleadingly suggest that the investigation undertaken in the immediate
7 aftermath of the fire and in the context of the *NBCU* and *AXA* litigations definitively
8 identified lost original master recordings, such that inclusion of an artist’s name on then-
9 contemporaneous working lists of potentially lost assets indicates the irreplaceable loss
10 of original masters embodying the works of that artist. That is wrong, as is made clear
11 by the sworn declaration of Patrick Kraus, Senior Vice President of Recording Studios
12 & Archive Management. In reality, as Mr. Kraus testifies, those working lists (like the
13 so-called “GOD List”) identified myriad potentially lost assets aside from original
14 master recordings, including production masters, protection copies, work tapes, safeties,
15 videos, as well as non-recorded music items such as artwork, session notes, and more.
16 Kraus Decl. ¶ 8. And, given that much of the contemporaneous record of the
17 NBCUniversal vault’s assets at the time of the fire was *itself* destroyed in the fire,
18 UMG’s post-fire working lists were essentially well-informed estimates of what overall
19 assets might have been destroyed—*i.e.*, a world apart from the sworn identification of
20 lost original masters Plaintiffs seek today. Indeed, UMG knows today that those post-
21 fire working lists were definitively wrong, as UMG has found many of the very assets
22 contained on those lists on the shelves of UMG’s archives. Plaintiffs’ Interrogatory No.
23 1 therefore seeks to compare apples to oranges—the post-fire investigation does not
24 resemble the different, absolutist investigation Plaintiffs demand today.

25 Plaintiffs’ continued misunderstanding about UMG’s post-fire investigation and
26 the present status of UMG’s vault appears to derive largely from numerous inaccuracies
27 and false statements in *The New York Times Magazine*’s reporting about the fire. Indeed,
28 UMG has already determined through its current investigation that it has on its vault

1 shelves assets that were incorrectly reported as destroyed in that article. And Plaintiffs’
2 demand for verified responses about whether original master recordings were destroyed
3 is ultimately not necessarily germane to UMG’s ability to commercially exploit the
4 recordings. This is because, even where original master recordings were not impacted
5 by the fire and are available to UMG, UMG often works from duplicates or digitized
6 versions because the fidelity of the original master has so deteriorated from overuse,
7 chemical interactions over time, or other technical reasons—reasons unrelated to any
8 damage or degradation from the fire. Kraus Decl. ¶ 14.

9 To undertake the (improper) globe-spanning investigation Plaintiffs demand
10 would—for reasons Mr. Kraus explains in detail—require a substantial diversion of
11 UMG’s workforce as well as the hiring of additional individuals at great expense, and
12 would ultimately take years to complete for the nearly 17,000 artists Plaintiffs identify.
13 UMG knows this because for nearly eight months it has been conducting its own inquiry
14 into fire-impacted assets as part of an effort, predating this suit, to provide transparency
15 to the artist community. In that time, UMG has received inquiries from 392 artists, and
16 to date has completed its review of assets and been in communication with 165 artists—
17 including the 19 artists identified in UMG’s Second Amended Response to Interrogatory
18 No. 1. That endeavor has required the effort of 19 full-time individuals, 30 more from
19 UMG, and an additional 30 at Iron Mountain, at a cost more than \$1.4 million to date,
20 which represents an average of almost \$8,500 for *each* of the 165 artists for whom the
21 inquiry has been completed. UMG remains committed to providing transparency to
22 inquiring artists. But Plaintiffs’ demand that the effort be broadened to nearly 17,000
23 artists—as would be required to verifiably, accurately, and fully respond to Interrogatory
24 No. 1—would impose an extraordinary and impermissible burden on UMG.

25 Plaintiffs’ additional requests related to the production of recording agreements,
26 RFP Nos. 16 and 41, are also improper. In response to the Court’s prior rulings, UMG
27 has already provided Plaintiffs thousands of artist-related agreements produced during
28 the *NBCU* litigation. Rather than actually *review* the many thousands of recording

1 agreements it has already received, Plaintiffs essentially ask UMG to do the job for them
2 by “confirm[ing] whether the database includes *all* the requested contracts.” Before
3 Plaintiffs may demand that UMG expend additional resources searching for yet *more*
4 recording agreements, it is Plaintiffs’ obligation to demonstrate the need for that
5 additional production. Having failed to even review what they have received (or identify
6 in their motion *any* specific recording agreements that are missing), they have not
7 established any basis to compel the production of more. And, to be clear, UMG never
8 “took the position for class certification purposes that Plaintiffs may rely on a partial
9 sampling of contracts,” as Plaintiffs state. Rather, UMG conveyed during the meet-and-
10 confer process its willingness to discuss and negotiate an agreement stipulating that the
11 thousands of already produced agreements constituted a more-than-sufficient set to
12 examine for the purpose of class-certification briefing.

13 Finally, Plaintiffs’ motion as it relates to RFPs No. 8 and 9 will shortly be moot
14 because UMG has already begun and will soon complete its production of all deposition
15 transcripts and associated exhibits from the *NBCU* litigation.

16 **ISSUES IN DISPUTE**

17 **A. Interrogatory No. 1**

18 **1. Plaintiffs’ Request and Defendant’s Response**

19 Interrogatory No. 1, served on August 16, 2019, states:

20 “Identify all artists who had any master recordings damaged or lost in, by, or as a
21 result of the June 1, 2008 fire on the NBCUniversal lot.”

22 UMG objected and responded to this interrogatory as follows on December 23,
23 2019, after a series of meet-and-confers on UMG’s prior objections:

24 “UMG incorporates each of its General Objections stated above. UMG further
25 objects to this Interrogatory on the grounds that it is untethered to the allegations in this
26 lawsuit and instead makes a blanket demand for information regarding artists who are
27 not currently, and may never be, parties to this action. UMG also objects to Interrogatory
28 No. 1 on the grounds that it is overly broad, unduly burdensome, oppressive, and

1 harassing. In particular, the Interrogatory targets information about non-parties. This
2 lawsuit has no viable named plaintiff, and the discovery process cannot be used to find
3 one. *See Douglas v. Talk Am., Inc.*, 266 F.R.D. 464, 467 (C.D. Cal. 2010) (plaintiffs
4 cannot ‘use the discovery process to go “fishing” to find [] new class representative[s]’).
5 The Interrogatory is also vague and ambiguous because, among other reasons, it does
6 not define the term ‘master recordings.’ UMG further objects to Interrogatory No. 1 to
7 the extent it implies master recordings were owned by anyone other than UMG; for each
8 of the named Plaintiffs, their recording agreements are clear that UMG owns the master
9 recordings embodying Plaintiffs’ performances.

10 “Subject to and without waiving any of the foregoing general and specific
11 objections, and based on the best information currently available to it, UMG responds
12 as follows:

13 “In the wake of the inaccurate The New York Times Magazine article concerning
14 the 2008 fire on the NBCUniversal lot, UMG set up a process to provide information
15 about the UMG assets in its archives to artists or their representatives who raised
16 concerns about whether UMG assets related to such artists were impacted by that fire.
17 That effort has involved multiple teams of people reviewing multiple systems, historic
18 records, and assets in UMG’s worldwide archives. That process remains ongoing and is
19 expected to continue for the foreseeable future, certainly well into 2020, if not beyond.

20 “In that process, UMG has attempted to identify whether the fire affected any of
21 UMG’s original master recordings—*i.e.*, analog or digital audio recording media
22 containing the individual audio tracks comprising the initial fixation of the original
23 elements of a recording session (e.g., a multitrack recording) and/or analog or digital
24 audio recording media containing the initial ‘flat’ mix output of an audio mixing session
25 of such individual audio tracks. The assets confirmed to date as damaged, destroyed, or
26 lost (*i.e.*, ‘affected’) in, by, or as a result of the June 1, 2008 fire that could be original
27 master recordings relate to the artists listed below, with explanatory context as provided:
28

1 “...And You Will Know Us by the Trail of Dead: Certain analog tapes that could
2 have been original flat master recordings embodying the performances of this artist were
3 affected, but UMG has copies on the same type of recording media for many of them.

4 “Beck: Certain original master recordings embodying the performances of this
5 artist were affected, but UMG has replacements of all of these affected assets.

6 “Bryan Adams: Certain original master recordings embodying the performances
7 of this artist were affected, but UMG has safeties and replacements of all such assets.

8 “David Baerwald: Certain analog tapes embodying the performances of this artist
9 were affected, but it is unclear if they were original master recordings, and UMG has
10 replacements for all of them.

11 “Elton John: Certain original master recordings embodying the performances of
12 this artist were affected, and UMG is still working with the artist to determine the extent
13 of such impact.

14 “Jimmy Eat World: Certain original digital master recordings embodying the
15 performances of this artist were affected, but UMG has digital clones of these digital
16 assets.

17 “Les Paul: An original master recording of a radio transcription embodying the
18 performance of this artist was affected.

19 “Michael McDonald: Certain multitrack drum worktapes embodying the
20 performances of this artist were affected.

21 “Nirvana: Certain original master recordings embodying the performances of this
22 artist were affected, but UMG has replacements or copies of all of them.

23 “Peter Frampton: An original master recording embodying the performance of
24 this artist was affected.

25 “R.E.M.: A reel marked ‘flat’ of one song from a soundtrack embodying the
26 performance of this artist was affected, but UMG has copies of this asset in the same
27 format.

28

1 “Sheryl Crow: Certain original flat mixes embodying the performances of this
2 artist were affected, but UMG has replacement copies.

3 “Slayer: A ½ inch flat original master recording embodying the performance of
4 this artist was affected.

5 “Sonic Youth: Certain original multitrack master reels embodying live
6 performances of this artist were affected.

7 “Soundgarden: As stated in UMG’s Amended Objections and Responses to
8 Plaintiffs’ Interrogatory No. 1, served on October 11, 2019, UMG lost original master
9 recordings embodying the performances of Soundgarden in the 2008 fire. Indeed, the
10 email correspondence attached to UMG’s Amended Objections and Responses to
11 Plaintiffs’ Interrogatory No. 1 shows that by no later than May 2015, UMG informed
12 Soundgarden members and a band manager that the two ½ inch stereo masters related
13 to *Badmotorfinger* had been lost in the fire. Notwithstanding this loss, UMG was still
14 able to successfully issue a remastered release of the album *Badmotorfinger* using a
15 digital audio tape safety copy, with Soundgarden’s knowledge and participation.

16 “Suzanne Vega: Certain affected assets may have been original flat masters
17 embodying the performances of this artist, but UMG has replacements on the same type
18 of recording media.

19 “Surfaris: Certain tapes are missing from UMG’s inventory which may have been
20 original master recordings embodying the performances of this artist and may have been
21 affected by the fire, although these conclusions are not definitive.

22 “White Zombie: An original digital multitrack asset embodying the performance
23 of this artist was affected, but UMG has an exact digital clone.

24 “Yesterday & Today (Y & T): Certain original master recordings embodying the
25 performances of this artist were affected, but UMG has replacements for all such assets.”
26
27
28

1 **2. Plaintiffs’ Position**

2 **a. Legal Standard**

3 As relevant to this and all other disputed issues discussed herein, under the Federal
4 Rules, “[p]arties may obtain discovery regarding any nonprivileged matter that is
5 relevant to any party’s claim or defense and proportional to the needs of the case,
6 considering the importance of the issues at stake in the action, the amount in controversy,
7 the parties’ relative access to information, the parties’ resources, the importance of the
8 discovery in resolving the issues, and whether the burden or expense of the proposed
9 discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Plaintiffs bear the initial
10 burden of demonstrating the disputed requests seek relevant information. *See Glaukos*
11 *Corp. v. Ivantis, Inc.*, Case No. CV 8:18-00620-JVS (JDEx), 2019 WL 3000647, at *2
12 (C.D. Cal. May 29, 2019). Upon such a showing, the burden shifts to UMG to justify
13 withholding relevant information. *Id.*

14 **b. Interrogatory No. 1 Seeks Relevant Information**

15 UMG’s relevance arguments set forth in its written objections to Interrogatory
16 No. 1 are not persuasive.

17 UMG first suggests that this interrogatory is “untethered to the allegations in *this*
18 lawsuit.” UMG is incorrect. Plaintiffs’ operative pleading seeks—in addition to a
19 recovery on the First Claim for Relief on behalf of all artists who UMG told NBCU and
20 AXA had lost master recording (*i.e.*, those whose master recordings were listed on the
21 spreadsheets shared with these prior litigation adversaries)—a recovery of separate and
22 additional damages on the remaining claims and causes of action on behalf of those
23 artists whose recordings were *actually*, not just *reportedly*, lost. *See, e.g.*, Amend.
24 Compl. ¶ 57 (“As a direct and proximate consequence of UMG’s breach of the implied
25 covenant of good faith and fair dealing and its voluntary bailment in connection with the
26 Master Recordings, Plaintiffs and the putative class have been damaged in an amount
27 which is not yet fully ascertained, but which Plaintiffs are informed and believe, and
28 allege thereon, equals 50% of the value of the Master Recordings less whatever damages

1 Plaintiffs and the putative class recover under their First Claim for Relief, according to
2 proof at trial.”).

3 UMG next suggests that Interrogatory No. 1 seeks irrelevant information because
4 the requested information encompasses artists beyond the four currently named
5 Plaintiffs. As the Court has previously recognized in connection with prior motions to
6 compel in this putative class case, discovery is not bifurcated or phased, and Plaintiffs
7 are entitled to seek information about other potential class members’ claims. *See*
8 *Doninger v. Pacific Nw. Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir. 1977) (recognizing
9 that “the better and more advisable practice” is to permit class discovery prior to
10 certification); *Castillo v. Bank of America N.A.*, No. 8:17-cv-00580-DOC-KESx, 2018
11 WL 6074580, at *5 (C.D. Cal. Sept. 28, 2018); *In re Toys R Us-Delaware, Inc. Fair and*
12 *Accurate Credit Transactions Act (FACTA) Litigation*, Case No. ML 08-1980 MMM
13 (FMOx), 2010 WL 4942645, at *5 (C.D. Cal. July 29, 2010).

14 In short, Interrogatory No. 1 seeks highly and centrally relevant information, and
15 UMG’s relevance objections therefore should be overruled.

16 **c. UMG’s Other Objections to Interrogatory No. 1 Fail**

17 UMG’s other objections to Interrogatory No. 1 have no merit either. UMG bears
18 the burden of persuasion as to these other objections. The objections raised in UMG’s
19 current response—based on purported boilerplate claims of (1)
20 overbreadth/burden/oppression/harassment, and (2) vagueness/ambiguity—are easily
21 resolved.³

22 *First*, UMG purports to challenge Interrogatory No. 1 on various
23 burden/proportionality-related grounds. But these UMG objections rely solely on
24 boilerplate rhetoric. UMG’s objections do not explain *what undue burden* UMG would
25 face in fully responding to the question posed about what master recordings were truly
26

27
28 ³ UMG’s further objection that the question posed by Plaintiffs “implies master recordings were owned by anyone other than UMG” is just an argument, and not a proper objection to a discovery request under any of the Federal Rules of Civil Procedure.

1 lost. *See Bragel Int'l, Inc. v. Kohl's Dept. Stores*, Case No. CV 17-7414 RGK (SSx),
2 2018 WL 7890682, at *5 (C.D. Cal. Nov. 14, 2018) (noting that “courts have also
3 rejected boilerplate assertions that a discovery request is ‘disproportionate’ and require
4 that ‘objections based on proportionality’ be ‘explained with specificity’”);
5 *Manufacturing Automation & Software Sys., Inc. v. Hughes*, Case No. CV 16-8962-CAS
6 (KSx), 2017 WL 5641120, at *4 (C.D. Cal. Sept. 21, 2017).

7 *Second*, UMG asserts that Interrogatory No. 1 is vague and ambiguous because it
8 does not define the term “master recording.” Yet in responding following this objection,
9 UMG supplied its own definition for this commonly-understood industry term. UMG
10 defines the term as follows: An “analog or digital audio recording media containing the
11 individual audio tracks comprising the initial fixation of the original elements of a
12 recording session (*e.g.*, a multitrack recording) and/or analog or digital audio recording
13 media containing the initial ‘flat’ mix output of an audio mixing session of such
14 individual audio tracks.” Plaintiffs agree that, for discovery purposes, the definition
15 UMG provided is adequate for UMG to use for the purpose of responding to these
16 discovery requests. UMG’s linguistic games therefore are not grounds for avoiding
17 answering the discovery at issue.

18 **d. UMG Failed to Fully Answer Interrogatory No. 1**

19 After purporting to reserve its various objections (and only after meeting-and-
20 conferring with Plaintiffs over these objections), UMG wrote an “answer” to the
21 interrogatory. But the answer UMG provided appears to be evasive and incomplete. *See*
22 Fed. R. Civ. P. 37(a)(4); *see, e.g., Ellis v. Infinite Labs, LLC*, Case No. SACV 13-00241
23 JLS (ANx), 2014 WL 12617353, at *1 (C.D. Cal. May 1, 2014) (compelling defendant
24 to supplement prior evasive interrogatory responses and “fully answer, without objection
25 or equivocation”). UMG previously told NBCU and AXA that *nearly 17,000* artists lost
26 original music recordings. Even assuming some portion of those identified artists’
27 recordings do not meet UMG’s current definition of “original master recordings,” it is
28

1 utterly inconceivable that *just 19 artists* (or anything close to that) actually lost such
2 recordings.

3 A careful reading of UMG’s answer appears to reveal the real reason why only 19
4 artists were listed in the current response. The list of artists is preceded in the answer by
5 a lengthy caveat (*i.e.*, a poorly-disguised objection) that begins with a description of a
6 “process” that UMG set up “to provide information about the UMG assets in its archives
7 *to artists or their representatives who raised concerns about whether UMG assets*
8 *related to such artists were impacted.*” UMG explains that this “process remains
9 ongoing and is expected to continue for the foreseeable future, certainly well into 2020,
10 *if not beyond.*” Thus, UMG contends that only assets it listed in the interrogatory
11 response as “confirmed to date as damaged, destroyed, or lost (*i.e.*, ‘affected’)” are those
12 that UMG recently *re-examined*, in response to contacts from specific artists or their
13 representatives, *after* the prior UMG settlements with NBCU and AXA. UMG is
14 improperly answering a different interrogatory than was asked.

15 UMG’s response is not based on a diligent inquiry and reasonable investigation
16 seeking *all* responsive information called for by the interrogatory. *See, e.g., Shyh-Yih*
17 *Hao v. Wu-Fu Chen*, No. C10–00826 LHK (HRL), 2011 WL 741225, at *1 (N.D. Cal.
18 Feb. 24, 2011). Instead, UMG appears to have self-servingly *limited* its response to
19 eliminate all artists previously listed on documents exchanged with NBCU and AXA
20 (such as UMG_SG-0000032), based on nothing more than its say-so and its mere
21 supposition that a re-examination of the scope of the fire loss today might yield different
22 results.

23 The Court should end these discovery games and grant the motion to compel.
24 UMG could include in its response to Interrogatory No. 1 the names of all artists whose
25 original master recordings appeared on the prior list exchanged with NBCU/AXA *unless*
26 UMG has a specific factual basis for concluding that a specific master recording *was not*
27 impacted—and if so, it needs to disclose all such facts. Or, UMG might choose to answer
28 the interrogatory by referencing the prior list, while separately listing each original

1 master recording that a subsequent UMG investigation confirmed was not lost despite
2 the earlier representation. But it is improper for UMG to suggest—as it does very clearly
3 in the current response given to Interrogatory No. 1—that UMG is declining to seek or
4 provide conclusive answers to Plaintiffs’ question before the close of fact discovery in
5 this case.

6 **3. Defendant’s Position**

7 Plaintiffs’ motion seeks to compel UMG to undertake a practically impossible,
8 extraordinarily burdensome undertaking to respond to Interrogatory No. 1, before
9 Plaintiffs’ claims have even survived a motion to dismiss and where UMG has already
10 informed Plaintiffs that UMG did not suffer a loss of original master recordings relating
11 to three of the four Plaintiffs. Plaintiffs’ unprecedented demand should be rejected.

12 Rule 33 explains that a party answering interrogatories “must furnish the
13 information available to the party.” Fed. R. Civ. P. 33(b)(1)(B). Specifically—and
14 importantly—it “must furnish information that is available to it and that can be given
15 *without undue labor and expense.*” Wright & Miller, *supra*, § 2174 (emphasis added).
16 And because “a party cannot ordinarily be forced to prepare its opponent’s case,”
17 “interrogatories that require a party to make extensive investigations, research, or
18 compilation or evaluation of data for the opposing party are in many circumstances
19 improper.” *Id.*; *see also United States v. \$209,815 in United States Currency*, 2015 WL
20 1927431, at *4 (N.D. Cal. Apr. 28, 2015) (denying motion to compel supplemental
21 response where respondent did “not have further documents to identify at th[e] time,
22 and, in any event, ‘a reasonable effort,’ not ‘extensive research’ is all that is required to
23 adequately respond to interrogatories” (citation omitted)); *Gorrell*, 292 F.R.D. at 632
24 (noting the “responding party is not required to conduct extensive research in order to
25 answer an interrogatory” and denying motion to compel interrogatory response where
26 responding “would be [overly] burdensome”).

27 For example, in *Blanton v. Torrey Pines Property Management, Inc.*, 2017 WL
28 1957560, at *4 (S.D. Cal. May 10, 2017), the court found an interrogatory to be

1 “overbroad and overly burdensome” because, *inter alia*, “the data sought would require
2 excessive amounts of time to collect” and would require “files to be pulled at great
3 burden and expense” to defendant. So too here. Specifically, Plaintiffs’ demand that
4 UMG “[i]dentify all artists who had any master recordings damaged or lost in, by, or as
5 a result of the June 1, 2008 fire on the NBCUniversal lot” is unduly burdensome,
6 oppressive, and disproportionate to the needs of this case for reasons articulated at length
7 in the declaration of Patrick Kraus.

8 As Mr. Kraus explains, shortly after *The New York Times Magazine*’s June 2019
9 article about the 2008 fire, UMG began receiving inquiries from recording artists and
10 their representatives regarding the impact of the fire on UMG assets that might embody
11 their performances. Kraus Decl. ¶ 3. In an effort to provide transparency to the artist
12 community—and before Plaintiffs filed this lawsuit—UMG set up a process to provide
13 information about assets in UMG’s archives to inquiring artists or their representatives.
14 *Id.* Since approximately June 27, 2019, UMG has dedicated a team of 19 researchers
15 across multiple locations in the United States and the United Kingdom “who work
16 exclusively on this effort.” *Id.* ¶ 4. Additionally, approximately 30 existing UMG staff
17 spend a portion of their time on this work, as well as approximately 30 Iron Mountain
18 staff in their Hollywood, California and Boyers, Pennsylvania vault locations. *Id.* As
19 of Wednesday, February 12, 2020, UMG has received inquiries from 392 artists, and to
20 date, UMG has completed its review of assets for 165 artists. *Id.* By demanding that
21 UMG complete investigations into the remainder of the 17,000 artists that appear on the
22 “GOD list,” Plaintiffs seek to force UMG to undertake this same detailed, burdensome
23 investigation on behalf of artists who have not yet even made such an inquiry of UMG,
24 and may never do so.

25 UMG’s effort to date has come at extraordinary effort and expense. Since the
26 publication of *The New York Times Magazine* article, UMG has spent more than \$1.4
27 million in its effort to determine whether UMG assets embodying the performances of
28 inquiring artists were destroyed in the fire. Kraus Decl. ¶ 11. That amounts to roughly

1 \$8,500 for *each* of the 165 of artists for whom UMG has determined one way or another
2 whether assets embodying their performances were destroyed in the fire. *Id.*
3 Completing this task “with verifiable accuracy and certainty in a matter of weeks or even
4 months” for the nearly 17,000 artists Plaintiffs identify “would require an extraordinarily
5 difficult, costly, and time-consuming effort,” for reasons explained by Mr. Kraus in
6 passages that merit quoting at length. *Id.* ¶ 6. As Mr. Kraus testified:

7
8 Determining whether a work embodying the performance of an individual
9 artist was destroyed in the fire is ***not as simple as identifying assets from***
10 ***a prior inventory or record and attempting to locate those items today.***
11 There is ***no comprehensive inventory or record of the assets*** (master
12 recordings or otherwise) that were inside the vault at the time of the fire.
13 Indeed, many of the records purporting to identify the contents of the vault
14 at the NBCUniversal lot at the time of the fire were themselves destroyed
15 in the fire, significantly ***compounding the difficulty of identifying which***
assets were in the vault at the time of the fire. Moreover, UMG acquired
catalogs of musical assets from other, pre-existing labels over the years and
UMG is at the mercy of whatever documentation those companies kept and
transferred to UMG, which was often incomplete or inaccurate.

16
17 Some paper records purporting to document portions of the vault’s contents
18 were salvaged from the vault during the fire. My understanding is that
19 these paper documents were among those used to generate internal working
20 lists and drafts of lists, like the so-called “GOD List,” of what assets might
21 have been lost in the fire. These assets include original master recordings,
22 but also production masters, protection copies, work tapes, safeties, videos,
23 as well as non-recorded music items such as artwork, session notes, and
24 more. ***Many of these salvaged paper records were themselves already out***
of date or otherwise inaccurate at the time of the fire. For example, some
25 of these paper records listed assets that had since been transferred from the
26 NBCUniversal lot vault to one of UMG’s many other facilities across the
27 globe or to some other location, including potentially the artists themselves
28 or others in the industry. In many instances, the salvaged records do not
provide any indication of such a transfer. ***Therefore, the mere inclusion***
of an asset in these prior vault records does not definitively establish that
the particular asset was in fact destroyed in the fire. Indeed, UMG has
determined that ***many of the assets on this list are on our shelves today.***

1 The process for determining what UMG assets were destroyed in the fire is
2 **complex, lengthy, and different for each individual artist**. For each artist
3 inquiry, individuals at UMG must first review all available documentation
4 and recordkeeping related to assets that may have been inside the lot vault.
5 For each identified asset, **UMG must manually search our database and**
6 **systems for that asset or a suitable alternative source asset across its**
7 **storage facilities around the world**, including Hollywood, California;
8 Boyers, Pennsylvania; Woolwich, UK; Hayes, UK; and our offices in
9 Japan, Australia, Canada and France, **using data that have proven to not**
10 **always be accurate**. Even then, certain assets that are not located within
11 UMG’s vaults might simply be outside UMG’s possession temporarily
12 while being used as source material for a project. For any one artist, the
13 entire process can take as long as several weeks and might require
14 coordination across eight or more facilities in three states and multiple
15 countries by ten or more people.

12 **For assets that are older, the process is especially complicated and time-**
13 **consuming**. For example, thousands of associated assets held at our
14 facilities around the world might relate to one particular artist. The first
15 step in inventorying those assets is to go through inventory data for each of
16 the assets individually and identify what they are. For these older assets,
17 we often must rely on the accuracy of data collected from information that
18 was originally written on a box in a studio or by a third party and which
19 was then subsequently transferred to a database. Where the information
20 was not catalogued reliably at the time the recordings were originally
21 created, more investigative work by our team is required. Once we have
22 conveyed the information to the artist or the artist’s representative, there
23 often is further dialogue between our team and the artist and/or the artist’s
24 representatives which has sometimes resulted in locating additional assets
25 that were not in a UMG facility but which may be in the possession of the
26 artist, a producer, another record company, or a recording studio.

22 See Kraus Decl. ¶¶ 7–10 (emphasis added).

23 Mr. Kraus’s sworn testimony more than adequately “explain[s] what undue
24 burden UMG would face in fully responding to the question posed about what master
25 recordings were truly lost.” See *supra* section A.2.c. Indeed, Mr. Kraus testified that
26 reliably and accurately completing the investigative process for the nearly 17,000 artists
27 Plaintiffs have identified could very well cost tens of millions of dollars (if not more),
28 would take years, would likely require “moving significant resources away from UMG’s

1 day-to-day business operations,” and—even then—“it likely will be ultimately
2 impossible for UMG to determine with a high degree of confidence precisely which
3 UMG original master recordings related to certain artists were or were not destroyed in
4 the fire.” Kraus Decl. ¶¶ 11, 15.

5 All of Plaintiffs’ arguments suggesting otherwise are unavailing.

6 *First*, Plaintiffs decry UMG’s “mere supposition that a re-examination of the
7 scope of the fire loss today might yield different results” as those suggested by the
8 inquiries made in the aftermath of the fire. Of course, this is not merely a uninformed
9 “supposition.” *See supra* section A.2.d. As Mr. Kraus made clear, “[m]any” of the
10 records that were used to “generate internal working lists and drafts of lists, like the so-
11 called ‘GOD List’”—from which Plaintiffs have derived their 17,000 figure—“were
12 themselves already out of date or otherwise inaccurate at the time of the fire” and
13 therefore included items that UMG has since learned were not in the vault at the time of
14 the fire and are in fact “on [UMG’s] shelves today.” Kraus Decl. ¶ 8. Moreover, the
15 17,000 figure likely includes artists for which the lost assets were not original master
16 recordings but rather other assets like “production masters, protection copies, work
17 tapes, safeties, videos, as well as non-recorded music items such as artwork, session
18 notes, and more.” *Id.* Of course, neither Mr. Kraus nor anyone else at UMG can swear
19 under oath to the loss of *original master recordings* based solely or even primarily upon
20 the artists’ inclusion among the nearly 17,000 names Plaintiffs have lifted from
21 recordkeeping materials from over a decade ago based upon an investigation with
22 different aims and metrics.

23 *Second*, Plaintiffs assert that “UMG previously told NBCU and AXA that *nearly*
24 *17,000* artists lost original music recordings” and that it is “utterly inconceivable” that
25 this figure is “anything close” to only the 19 artists UMG has specifically identified to
26 date in response to Interrogatory No. 1. But UMG has never made any such “utterly
27 inconceivable” suggestion. Again, Plaintiffs are misconstruing the purpose and results
28 of the post-fire investigation and working lists used in connection with that effort, which,

1 as UMG previously told Plaintiffs in a sworn interrogatory, “reflected UMG’s then best,
2 evolving understanding of potentially fire-impacted assets generally, and were not
3 specifically targeted at or limited to original master recordings.” UMG’s Amended
4 Response to Interrogatory No. 2 (December 2, 2019). It is therefore not correct to say
5 or suggest that UMG previously told NBCU that it definitively lost original music
6 recordings for nearly 17,000 artists. As Mr. Kraus’s declaration states, “the mere
7 inclusion of an asset in these prior vault records [*e.g.*, the ‘GOD List’] does not
8 definitively establish that the particular asset was in fact destroyed in the fire. Indeed,
9 we have determined that many of the assets on this list are on our shelves today.” Kraus
10 Decl. ¶ 8. Plaintiffs’ apparent miscomprehension here appears to stem in part from
11 incorrect information provided in *The New York Times Magazine* article on which
12 Plaintiffs admit their complaint is based.

13 *Third*, Plaintiffs claim that UMG is “improperly answering a different
14 interrogatory than was asked.” Not so. UMG’s efforts to date have in fact provided
15 Plaintiffs with full and complete information to the best of UMG’s evolving
16 knowledge—and can continue to do so on an ongoing basis—as to those artists for whom
17 UMG has been able to complete its investigation, even though—again—“a responding
18 party is not required to conduct extensive research in order to answer an interrogatory.”
19 *Gorrell*, 292 F.R.D. at 639 (denying motion to compel on these grounds); *Garcia v.*
20 *Blahnik*, 2016 WL 3854584, at *3 (S.D. Cal. July 15, 2016) (denying plaintiff’s motion
21 to compel a further response from defendants—where defendants stated there was “no
22 greater detail available”—because the “Court cannot compel Defendants to provide
23 information they claim does not exist”). Such an impermissibly “extensive” search is
24 exactly what Plaintiffs are seeking to compel here.

25 At bottom, Plaintiffs seek to force UMG to verify an interrogatory response that
26 it simply cannot, and certainly not on the basis of the record before it. UMG’s response
27 to date for Interrogatory No. 1 is based on UMG’s ongoing but evolving investigation,
28 which began before and separately from this litigation and is meant to respond to

1 inquiries from the artist community. UMG has provided to Plaintiffs the only responsive
2 information it can verify based on its current investigation. Plaintiffs’ demand that UMG
3 conduct a holistic, worldwide investigation on Plaintiffs’ own timeline so that Plaintiffs
4 can attempt to prop up their own claims is the very definition of an improper and
5 burdensome fishing expedition. Mr. Kraus’s declaration makes this reality crystal clear.
6 Plaintiffs’ motion to compel should be denied.

7 **B. Demand No. 8**

8 **1. Plaintiffs’ Request and Defendant’s Response**

9 Demand No. 8, served on July 24, 2019, seeks:

10 “To the extent not produced in response to Demand No. 2, all deposition
11 transcripts, including any exhibits thereto, of UMG witnesses reviewed by Larry
12 Gerbrandt in the FIRE CASE.”

13 UMG objected to this demand as follows on August 22, 2019:

14 “UMG incorporates each of its General Objections stated above. UMG further
15 objects to this Demand on the grounds that it is completely untethered to the allegations
16 in *this* lawsuit made by *these* Plaintiffs. Instead, the Demand asks for materials—some
17 of which may be redacted—in *another* litigation, without regard to whether those
18 materials relate in any way to Plaintiffs, their claims or agreements, or sound recordings
19 embodying performances by Plaintiffs. Consequently, Plaintiffs improperly seek the
20 production of documents that are not relevant to Plaintiffs’ claims or proportional to the
21 needs of this case. UMG also objects to Demand for Production No. 8 on the grounds
22 that it is overly broad, unduly burdensome, oppressive, and harassing. In particular, the
23 Demand targets confidential information, without regard to relevance, including
24 confidential information belonging to third parties and proprietary business information
25 subject to a protective order in the FIRE CASE. Finally, UMG objects to this Demand
26 for the reasons stated in the Stay Motion. Based on the foregoing objections, UMG will
27 not search for or produce documents responsive to this Demand, but UMG is willing to
28

1 meet and confer to discuss whether this Demand can be narrowed in light of UMG’s
2 objections.”

3 **2. Plaintiffs’ Position**

4 UMG’s objections to Demand No. 8 are not at all persuasive.

5 As a category, the depositions that UMG’s damages expert reviewed in the course
6 of the prior NBCU litigation are highly likely to contain information that is either
7 relevant, or that is likely to lead to the discovery of relevant information. This case and
8 the NBCU case are related. One theory of recovery articulated in the current complaint
9 here is that Plaintiffs are contractually entitled to share in the money that UMG
10 recovered in the NBCU case.

11 UMG’s undue burden/proportionality objection to the request is impermissible
12 boilerplate, and contrary to common sense. All of the requested deposition transcripts
13 can be shared without any significant burden—UMG does not prove with any evidence
14 that it is unduly burdensome to somehow re-produce deposition transcripts already
15 gathered from prior litigation. UMG’s proposal to first send Plaintiffs a mere list of all
16 these depositions, and then later have another fight over which specific depositions
17 should be produce (apparently to be determined by the names of the deponents alone),
18 would *add* to both parties’ burden.

19 UMG’s last two objections also fail. As the Court has already recognized in
20 resolving prior discovery disputes in this case, confidentiality is not a proper objection
21 to a request for relevant, proportional discovery. *See* Dkt. 53; *Antiaging Institute of*
22 *California, Inc. v. Solonova, LLC*, Case No. 2:15-cv-3416-AB (FFMx), 2016 WL
23 6920676, at *2 (C.D. Cal. June 29, 2016) (“With respect to claims of confidentiality, a
24 protective order would more than adequately address the objections.”).

25 UMG’s stay motion has also been denied. *See* Dkt. 65.
26
27
28

1 **3. Defendant’s Position**

2 As with RFP No. 9, UMG is currently preparing for production all deposition
3 transcripts, including all associated exhibits, from the *NBCU* litigation, which will
4 render this request moot.

5 **C. Demand No. 9**

6 **1. Plaintiffs’ Request and Defendant’s Response**

7 Demand No. 9, served on July 24, 2019, seeks:

8 “All other deposition transcripts, including all exhibits thereto, generated in the
9 FIRE CASE.”

10 UMG objected to this demand as follows on August 22, 2019:

11 “UMG incorporates each of its General Objections stated above. UMG further
12 objects to this Demand on the grounds that it is completely untethered to the allegations
13 in *this* lawsuit made by *these* Plaintiffs. Instead, the Demand asks for materials—some
14 of which may be redacted—in *another* litigation, without regard to whether those
15 materials relate in any way to Plaintiffs, their claims or agreements, or sound recordings
16 embodying performances by Plaintiffs. Accordingly, Plaintiffs improperly seek the
17 production of documents that are not relevant to Plaintiffs’ claims or proportional to the
18 needs of this case. UMG also objects to Demand for Production No. 9 on the grounds
19 that it is overly broad, unduly burdensome, oppressive, and harassing. In particular, the
20 Demand targets confidential information, without regard to relevance, including
21 confidential information belonging to third parties and proprietary business information
22 subject to a protective order in the FIRE CASE. Finally, UMG objects to this Demand
23 for the reasons stated in the Stay Motion. Based on the foregoing objections, UMG will
24 not search for or produce documents responsive to this Demand, but UMG is willing to
25 meet and confer to discuss whether this Demand can be narrowed in light of UMG’s
26 objections.”

27 **2. Plaintiffs’ Position**

28 UMG’s objections to Demand No. 8 are not at all persuasive.

1 As a category, the depositions taken for the prior NBCU litigation are highly
2 likely to contain information that is either relevant, or that is likely to lead to the
3 discovery of relevant information. This case and the NBCU case are related. One theory
4 of recovery articulated in the current complaint here is that Plaintiffs are contractually
5 entitled to share in the money that UMG recovered in the NBCU case.

6 UMG's undue burden/proportionality objection to the request is impermissible
7 boilerplate, and contrary to common sense. All of the requested deposition transcripts
8 can be shared without any significant burden—UMG does not prove with any evidence
9 that it is unduly burdensome to somehow re-produce deposition transcripts already
10 gathered from prior litigation. UMG's proposal to first send Plaintiffs a mere list of all
11 these depositions, and then later have another fight over which specific depositions
12 should be produce (apparently to be determined by the names of the deponents alone),
13 would *add* to both parties' burden.

14 UMG's last two objections also fail. As the Court has already recognized in
15 resolving prior discovery disputes in this case, confidentiality is not a proper objection
16 to a request for relevant, proportional discovery. *See* Dkt. 53; *Antiaging Institute of*
17 *California*, 2016 WL 6920676, at *2.

18 UMG's stay motion has also been denied. *See* Dkt. 65.

19 **3. Defendant's Position**

20 UMG has met and conferred with Plaintiffs in good faith regarding this request.
21 In the midst of what UMG believed were ongoing discussions, Plaintiffs sent UMG the
22 Joint Stipulation regarding Plaintiffs' Third Motion to Compel. Two days later, and
23 pursuant to the parties' continuing meet and confer, UMG produced *NBCU* deposition
24 transcripts for Larry Gerbrandt and Beth Lopez-Barron, along with all associated
25 exhibits. At Plaintiffs' request, UMG also sent a list of all other individuals deposed in
26 the *NBCU* litigation.

27 The *NBCU* litigation involved not only testimony and information regarding
28 UMG's damages from the 2008 fire but also testimony regarding the details and

1 underlying cause of the fire itself. Nevertheless, despite the fact that many deposition
2 transcripts contain information that is irrelevant to this case, UMG is currently preparing
3 for production to Plaintiffs all deposition transcripts, including all associated exhibits,
4 from the *NBCU* litigation, which will render this request moot.

5 **D. Demand No. 16**

6 **1. Plaintiffs' Request and Defendant's Response**

7 Demand No. 16, served on July 24, 2019, seeks:

8 "All recording agreements entered into by YOU or YOUR predecessors which
9 RELATE TO, concern or encompass master recordings destroyed in the FIRE."

10 UMG objected to this demand as follows on August 22, 2019:

11 "UMG incorporates each of its General Objections stated above. UMG further
12 objects to Demand for Production No. 16 because it seeks confidential and private
13 information concerning individuals who are not party to this action and who would not
14 even be members of a putative class. Indeed, certain recording artists might have strong
15 objections to having their recording agreements shared with others in the industry. *Cf.*
16 *Golez v. Potter*, 2011 WL 6002612, at *1 (S.D. Cal. Nov. 29, 2011) (rejecting plaintiff's
17 discovery request for attendance records of *non-party* employees on privacy grounds);
18 *Hampton v. City of San Diego*, 147 F.R.D. 227, 230–31 (S.D. Cal. 1993) (reviewing files
19 of non-party police officers *in camera* out of 'concern' for their 'privacy rights').
20 Accordingly, UMG objects to this Demand because it is overly broad, unduly
21 burdensome, oppressive, and harassing, and seeks the production of material that is not
22 relevant [to] Plaintiffs' claims and is therefore not proportional to the needs of this case.
23 UMG further objects to this Demand because it is vague and ambiguous, as UMG does
24 not know how Plaintiffs define 'encompass' or 'master recordings' in this context.
25 Finally, UMG objects to this Demand for the reasons stated in the Stay Motion. Subject
26 to and without waiver of the foregoing objections and the General Objections above, and
27 without admitting that any master recordings embodying Plaintiffs' performances were
28 destroyed in the FIRE, UMG will produce agreements between UMG (or its

1 predecessors) and named Plaintiffs that contain provisions relating to ownership of
2 master recordings, as UMG understands that term.”

3 **2. Plaintiffs’ Position**

4 UMG’s objections to Demand No. 16 are easily overruled. UMG’s only
5 relevance-related argument is the erroneous contention that information about absent
6 class members other than the named Plaintiffs is not discoverable. Discovery is not
7 bifurcated in this case. UMG’s discovery position also raises a substantial sword/shield
8 problem because at the same time UMG refuses to produce this information, it will not
9 also commit to avoid using information about absent class members in its opposition to
10 class certification. UMG’s agreement to produce the named Plaintiffs’ recording
11 agreements does not in any way moot this document request. UMG’s only
12 proportionality/burden objection is impermissible boilerplate with no support or proven
13 quantification. Alleged artist privacy and confidentiality, in a case with a stipulated
14 protective order governing the production of such information, *see* Dkt. 63, does not
15 provide a basis for objecting to requests for relevant information. And UMG’s stay
16 motion has already been denied. *See* Dkt. 65.

17 That leaves only UMG’s written objections based on the purported vagueness of
18 the words “encompass” and “master recordings.” But there is nothing at all ambiguous
19 about the word “encompass.” And UMG itself has now supplied (in connection with its
20 above-discussed response to Interrogatory No. 1) a definition of “master recordings.”
21 Plaintiffs agree that will suffice for purposes of responding to this document request.

22 Although not mentioned in UMG’s written objections, UMG has also now
23 produced certain artist recording agreements, beyond those of the named Plaintiffs, as
24 part of its partial production of materials from the NBCU litigation. That production,
25 too, does not moot the need to respond to this request. UMG refuses to confirm whether
26 the agreements produced are in fact *all* the agreements associated with master recordings
27 lost in the fire. It is not Plaintiffs’ burden to determine whether or not UMG counsel’s
28 prior production to NBCU was complete or incomplete in this respect—UMG is in

1 possession of information enabling it to determine whether or not other relevant artist
2 agreements may exist and if so, those need to be produced.

3 **3. Defendant's Position**

4 Plaintiffs acknowledge that, in connection with its *NBCU* production, UMG
5 produced "*certain* artist recording agreements, beyond those of the named Plaintiffs."
6 *See supra* D.2 (emphasis added). But Plaintiffs conveniently fail to note the magnitude
7 of that production—specifically, the fact that among those documents UMG has already
8 produced thousands of recording agreements.

9 The Federal Rules limit the scope of discovery if the material "sought is
10 unreasonably cumulative or duplicative." Fed. R. Civ. P. 26(b)(2)(C)(i). Forcing UMG
11 to turn over to Plaintiffs even *more* recording agreements before Plaintiffs have even
12 indicated whether they have *reviewed* the thousands they have already received would
13 undoubtedly be duplicative and improper. *See Hardge v. Adams*, 2009 WL 410125, at
14 *2 (E.D. Cal. Feb. 17, 2009) (cautioning that plaintiffs must "narrowly tailor" discovery
15 requests or risk that they be denied "as overly broad"). Plaintiffs do not argue otherwise
16 because they cannot.

17 In any event, despite Plaintiffs' unadorned assertions to the contrary, their request
18 cannot be completed within the short timeframe Plaintiffs prefer. As explained above,
19 UMG is currently undertaking a time-consuming and costly investigation to accurately
20 determine which original master recordings were in fact destroyed in the fire. Until
21 UMG makes that determination as to a given original master recording, it cannot confirm
22 the prior production of—or produce anew—the recording agreements and amendments
23 that "concern or encompass" that recording or artist. The only way to produce all of the
24 recording agreements to Plaintiffs now without undertaking that burdensome
25 investigation would be to hand over to Plaintiffs each and every one of UMG's recording
26 agreements that predates the fire (including those involving UMG's predecessor
27 entities). That set of agreements would not only include plainly irrelevant material but
28

1 would also fail to actually move the parties any closer to determining which of those
2 agreements “concern or encompass master recordings destroyed in the FIRE.”

3 Again, it remains unclear from Plaintiffs’ position statement on RFP No. 16
4 whether they have even *looked* at any of the previously produced agreements to
5 determine whether they are, on the whole, sufficient. That notwithstanding, if UMG
6 determines that any additional original master recordings were in fact destroyed in the
7 fire, it will produce available recording agreements for those related artists to Plaintiffs,
8 assuming they have not been turned over already.

9 **E. Demand No. 41**

10 **1. Plaintiffs’ Request and Defendant’s Response**

11 Demand No. 41, served on November 18, 2019, seeks:

12 “All recording agreements entered into by YOU or YOUR predecessors which
13 RELATE TO, concern or encompass recordings or other assets (whether or not UMG
14 currently contends they are ‘original master recordings’) that UMG claimed, asserted,
15 or implied in any prior litigation, in any insurance dispute, or in connection with
16 settlements of litigation or insurance disputes, were, or may have been, damaged or lost
17 in, by, or as a result of the June 1, 2008 fire on the NBCUniversal lot.”

18 UMG objected to this demand as follows on December 18, 2019:

19 “UMG incorporates each of its General Objections stated above. UMG further
20 objects that this Demand is duplicative of Plaintiffs’ Demand for Production No. 16.
21 UMG therefore objects that searching for additional recording agreements—beyond
22 those requested by Demand for Production No. 16 and produced in response thereto by
23 UMG on December 13, 2019—would be unduly burdensome and not proportional to the
24 needs of this case. UMG further objects that Demand for Production No. 41 is
25 impermissibly vague, ambiguous, and incomprehensible because it (a) does not define
26 the terms ‘recordings,’ ‘other assets,’ or ‘original master recording,’ and (b) broadly
27 seeks without explanation documents relating to recordings or other assets that UMG
28 ‘claimed, asserted, or implied’ were or may have been damaged or lost in the June 1,

1 2008 fire. Additionally, UMG objects to this Demand for Production because it seeks
2 documents untethered to the allegations in this lawsuit, which are related only to
3 contractual provisions based upon the licensing of master recordings embodying
4 Plaintiffs’ performances. If, following their review of UMG’s December 13, 2019
5 production, which contained thousands of recording agreements produced by UMG in
6 the NBCU litigation, Plaintiffs can establish a need for additional recording agreements,
7 UMG will meet and confer with Plaintiffs regarding the same.”

8 **2. Plaintiffs’ Position**

9 UMG’s objections to Demand No. 41 are also easily overruled. The requested
10 documents are highly relevant. UMG’s objection based on purported duplication of
11 Demand No. 16 is rich—it is UMG itself that sought to persuade Plaintiffs, the Court,
12 and the public that the list of artists whose recordings were *actually* lost may not be
13 commensurate with the list of artists whose recordings UMG (and its prior counsel
14 consistent with its ethical obligations under applicable rules) told NBCU and AXA were
15 lost. UMG’s undue burden objection is nothing more than boilerplate. There is nothing
16 ambiguous about any of the terms used in this request—UMG can use its own definition
17 of “master recordings” elsewhere provided for purposes of responding, and produce the
18 contracts associated with any master recordings on the list of purportedly lost assets that
19 was provided to NBCU and AXA. And as discussed above in connection with Demand
20 No. 16, there is no basis in the Federal Rules of Civil Procedure, or any other applicable
21 rule, for UMG’s suggestion that it can rely on a prior counsel’s potentially-partially-
22 overlapping production from another case, and thereby avoid making a commitment to
23 do its own *complete* collection, review, and production of highly relevant documents in
24 this litigation.

25 **3. Defendant’s Position**

26 As Plaintiffs are of course aware, UMG *has already produced* thousands of
27 recording agreements it previously produced in the *NBCU* litigation. Indeed, in response
28 to NBCU’s document requests, UMG produced recording agreements pertaining to

1 artists on the “GOD List,” and Plaintiffs have UMG’s entire production made to NBCU
2 as result of this Court’s order on Plaintiffs’ first motion to compel. Those produced
3 agreements concern artists on the now-outdated “GOD List” (*i.e.*, a list of assets that
4 UMG believed during prior litigation may have been impacted by the fire). UMG has
5 therefore satisfied this demand in full—Plaintiffs simply need to review those
6 documents that have already been provided to them.

7 Even if there was any daylight between the recording agreements that UMG
8 produced in the *NBCU* litigation (and reproduced here to Plaintiffs) and the artists on
9 the “GOD List,” Plaintiffs have utterly failed to show why the thousands of agreements
10 that they already have are insufficient for their purposes in this litigation. This request
11 should be denied.

12
13 Dated: February 13, 2020

**KING, HOLMES, PATERNO &
SORIANO, LLP**

14
15 By: /s/ Howard E. King⁴
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28 ⁴ Pursuant to L.R. 5-4.3.4(a)(2)(i), counsel for Plaintiffs, *Howard E. King*, certifies that
all other counsel have consented to and authorized the filing of this document with
their electronic signature.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of February 2020, I have electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all parties and counsel of record by operation of the Court's CM/ECF system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ Mark H. Hatch-Miller