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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 K-BEECH, INC.,

9 Plaintiff.

Case No. 2:11-cv-01604-NVW

10 v.

11 GEORGE HERNANDEZ, SHANA SHREIBER,
12 RICHARD SAATHOFF, BRIAN TROTTIER
13 and CATHERINE VALDEZ,

14 Defendants.

15 **PLAINTIFF’S RESPONSE TO DEFENDANT BRIAN BOURGAIN-TROTTIER**
16 **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

17 Plaintiff, K-Beech, Inc. (“Plaintiff”), by and through undersigned counsel,
18 responds to Defendant’s, Brian Bourgain-Trottier the (“Defendant”)’s First Request for
19 Production of Documents (“Requests”) as follows:

20 **STATEMENT OF WILLINGNESS TO COOPERATE**

21 1. Counsel for Plaintiff is prepared to discuss with Defendant the objections
22 set forth below for the purpose of resolving any disputes that may arise over the
23 production of documents without the need for intervention by the Court.
24

1 **GENERAL OBJECTIONS**

2 2. Plaintiff objects to the Requests propounded by Defendant because the
3 Request for Production has been filed untimely and without leave from the Court
4 pursuant to Rule 26(d)(1), which specifically states: “[a] party may not seek discovery
5 from any source before the parties have conferred as required by Rule 26(f), except in
6 a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when
7 authorized by these rules, by stipulation, or by court order.

8 3. Plaintiff objects to the Requests to the extent they are vague, ambiguous,
9 overbroad, harassing and/or unduly burdensome.

10 4. Plaintiff objects to the Requests to the extent they seek the production of
11 documents that contain attorney-client privileged material.

12 5. Plaintiff objects to the Requests to the extent that they call for the
13 production of documents that are neither relevant to the action nor reasonably
14 calculated to lead to the discovery of admissible evidence.

15 6. Plaintiff objects to the fact that many of the requests do not contain an
16 applicable time frame and are therefore ambiguous and overbroad.

17 7. Plaintiff objects to the requests to the extent they call for the disclosure of
18 documents that are protected because the documents contain: (1) trade secrets, (2)
19 confidential research, and/or (3) commercial information.
20

21 **DOCUMENT REQUESTS**

22 **REQUEST NO.1:** Certificate of Registration for Copyright of Virgins 4 issued by US
23 Copyright Office.
24

1 **RESPONSE TO REQUEST NO. 1:**

2 Plaintiff will produce all documents in its possession, custody, or control deemed
3 responsive to this request.

4
5 **REQUEST NO.2:** All income statements reflecting sales of Virgins 4 from date of first
6 publication to the date of this request.

7 **RESPONSE TO REQUEST NO. 2:**

8 Plaintiff objects to this request on the basis that it seeks documents that contain
9 proprietary “commercial information” within the meaning of Fed. R. Civ. P.
10 26(c)(1)(G). Notwithstanding the foregoing objection, Plaintiff will produce all
11 documents in its possession, custody, or control deemed responsive to this request
12 provided that Defendant stipulate to entry of the Protective Order attached hereto as
13 Exhibit A.
14

15
16 **REQUEST NO.3:** All receipts for sales of Virgins 4 beginning February 1, 2011 to the
17 date of this request.

18 **RESPONSE TO REQUEST NO. 3:**

19 Plaintiff objects to this request on the basis that it seeks documents that contain
20 proprietary “commercial information” within the meaning of Fed. R. Civ. P.
21 26(c)(1)(G). Notwithstanding the foregoing objection, Plaintiff will produce all
22 documents in its possession, custody, or control deemed responsive to this request
23
24

1 provided that Defendant stipulate to entry of the Protective Order attached hereto as
2 Exhibit A.

3
4 **REQUEST NO.4:** All receipts evidencing production costs for Virgins 4.

5 **RESPONSE TO REQUEST NO. 4:**

6 Plaintiff objects to the request seeking “[a]ll receipts evidencing the production costs for
7 Virgins #4” because said request is meant to harass Plaintiff and does not seek
8 information that is relevant to any issue in the case or likely to lead to the discovery of
9 admissible information. To explain, Plaintiff is seeking statutory damages or actual
10 damages. Regarding actual damages, the calculation is based on lost sales to the
11 infringers. The production cost to create movies does not bear on the issue of how many
12 lost sales were caused by the infringement; nor does the production cost bear on the
13 price of the movie, which is a fixed amount.

14
15
16 **REQUEST NO. 5:** Legal service Agreement covering this litigation.

17 **RESPONSE TO REQUEST NO. 5:**

18 Plaintiff objects to the request seeking “[l]egal service Agreement covering this
19 litigation” because the documents contain attorney-client privileged material,
20 confidential trade secrets, and proprietary information and the production of these
21 documents is not relevant to the action nor reasonably calculated to lead to the discovery
22 of admissible evidence.
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1 **REQUEST NO.6:** Federal Income Tax Filings for tax years 2010 and 2011.

2 **RESPONSE TO REQUEST NO. 6:**

3 Plaintiff objects to the request seeking “Federal Income Tax Filings for tax years 2010
4 and 2011” because it is overbroad as Plaintiff’s tax returns reflect the aggregate of all
5 videos and sales and are not limited to the video in its claim. Additionally, Plaintiff
6 objects to this request on the basis that it contains confidential and proprietary
7 information within the meaning of Fed. R. Civ. P. 26(c)(7).
8

9
10 **REQUEST NO.7:** All documents containing information upon which you base your
11 claim for damages including lost profits, sale erosion and financial depletion arising
12 from the allegations contained in the Amended Complaint.

13 **RESPONSE TO REQUEST NO. 7:**

14 Plaintiff will produce all documents in its possession, custody, and control deemed
15 responsive to this request. Notwithstanding the foregoing, Plaintiff is continuing to
16 acquire documents and reserves the right to supplement its production of documents.
17

18 **REQUEST NO. 8:** All electronic data supporting the allegations in the Amended
19 Complaint.
20

21 **RESPONSE TO REQUEST NO. 8:**

22 Plaintiff objects to the request seeking “[a]ll electronic data supporting the
23 allegations in the Amended Complaint” because it is not stated to the requisite
24 degree of specificity required under the Fed. R. Civ. P. Plaintiff further objects on

1 the basis that the request is meant to annoy, oppress, and unduly burden Plaintiff.
2 Additionally, Plaintiff objects on the basis that many of the requested documents
3 contain confidential and proprietary commercial information and attorney-client
4 privileged material. Plaintiff further objects to this request on the basis that it is
5 vague, ambiguous, not stated with the requisite degree of specificity required by
6 the Federal Rules of Civil Procedure, and calls for a set of documents the culling
7 and production of which would necessarily disclose the mental impressions and
8 opinions of Plaintiff's counsel. Specifically, the statement "supporting the
9 allegations" is too vague to be intelligently responded to without disclosing the
10 mental impressions of Plaintiff's counsel, and therefore any set of documents
11 culled in responsive to this vague request would disclose the mental impressions
12 of Plaintiff's counsel.
13

14
15 **REQUEST NO. 9:** All electronic data evidencing internet traffic to websites, shopping
16 carts upon which Virgins 4 is listed for sale.

17 **RESPONSE TO REQUEST NO. 9:**

18 Plaintiff objects to the request "[a]ll electronic data evidencing internet traffic to
19 websites, shopping carts upon which Virgins 4 is listed for sale" because it is not stated
20 to the requisite degree of specificity required under the Fed. R. Civ. P. Plaintiff further
21 objects on the basis that the request is meant to annoy, oppress, and unduly burden
22 Plaintiff. Additionally, Plaintiff objects on the basis that many of the requisite
23
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1 documents would contain confidential and proprietary commercial information,
2 including the identity of the Plaintiff's customers.

3
4 **REQUEST NO. 10:** All contracts existing with media distributors. Video stores, book
5 stores, movie theaters and retail stores and outlets which enable commercial entities to
6 sell, distribute, lease, rent or otherwise display Virgins #4 to the public.

7 **RESPONSE TO REQUEST NO. 10:**

8 Plaintiff objects to this request on the basis that the requested documents contain
9 confidential and proprietary information within the meaning of Fed. R. Civ. P. 26(c)(7).
10 Notwithstanding the foregoing objection, Plaintiff will produce all documents in its
11 possession, custody, or control deemed responsive to this request if Defendant stipulates
12 to entry of the Protective Order attached hereto as Exhibit A.
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14
15 Plaintiff reserves its right to amend this Response to the Request for Production
16 up to the time of trial.

17 DATED this 30th day of January, 2012.

18 Respectfully submitted,

19 /s/ Ryan J. Stevens

20 Ryan J. Stevens

AZ Bar No. 026378

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Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on January 30th, 2012 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system, and a copy was sent via certified mail to Brian Trottier, 10711 E Bramble Ave., Mesa, AZ 85208.

/s/ Ryan J. Stevens
Ryan J. Stevens