

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DWAYNE D. WALKER, JR.,

Plaintiff,

-against-

SHAWN CARTER (“JAY-Z”), DAMON
“DAME” DASH, KAREEM “BIGGS”
BURKE, UNIVERSAL MUSIC GROUP, INC.,
ISLAND DEF JAM MUSIC GROUP, ROC-A-
FELLA RECORDS, LLC,

Defendants.

Case No.: 12-cv-05384(ALC)(RLE)
ECF

**DEFENDANT SHAWN CARTER’S MEMORANDUM OF LAW IN SUPPORT OF
ORDER TO SHOW CAUSE REGARDING MOTION FOR PROTECTIVE ORDER
AND TO QUASH PLAINTIFF’S NOTICE OF DEPOSITION**

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INTRODUCTION

Defendant Shawn Carter (p/k/a Jay Z) (“Mr. Carter”) seeks the protection of this Court pursuant to Federal Rule of Civil Procedure 26(c) to prevent plaintiff Dwayne D. Walker, Jr. (“Plaintiff”) from engaging in abusive and unnecessary discovery and to quash his notice to take Mr. Carter’s deposition on August 28, 2014. Taking Mr. Carter’s deposition – which amounts to an “apex” deposition of a senior corporate official – would waste valuable time and resources of the parties, their counsel, and potentially the Court, because, as explained in his sworn declaration, Mr. Carter has no unique personal knowledge of the alleged agreement Plaintiff claims was breached. Indeed, Mr. Carter has no personal knowledge of the claimed agreement whatsoever, nor will he be able to fill the evidentiary gaps in Plaintiff’s demonstrably unsupported case. Given that Plaintiff has not, and will not, uncover any new evidence that is probative on Plaintiff’s claims or the defendants’ defenses, Mr. Carter also reasonably believes that the deposition serves no purpose other than, and was designed to, harass him and interfere with his various business responsibilities. Plaintiff’s counsel’s constant rhetoric in the press and on his website further exposes this deposition for what it truly is – a sideshow.

As courts in this Circuit routinely recognize, this Court can and should grant Mr. Carter’s motion for a protective order in connection with Plaintiff’s improper notice of deposition of Mr. Carter.

FACTUAL BACKGROUND

This is a copyright infringement and breach of contract action concerning an alleged business deal between Plaintiff and certain defendants whereby, nearly two decades ago, Plaintiff supposedly created the logo for the Roc-A-Fella Records label (the “Logo”). Plaintiff alleges that the defendants owe him \$7 million in royalties because he allegedly “created” the Logo and the defendants used the Logo – without objection – in connection with Roc-A-Fella Records and

its various products over the next 17 years. Plaintiff claims that he and defendant Damon Dash signed a written contract in 1995 granting Plaintiff a 2% royalty on all revenues earned from the sale of products bearing the Logo for a period of 10 years. However, Plaintiff claims to have lost the only copy of the contract, and none of Plaintiff's witnesses has been able to corroborate its existence, much less its terms. Indeed, after conducting significant discovery, the record is bereft of any competent evidence – documentary or otherwise – of any agreement between Plaintiff and the defendants, much less between Plaintiff and Mr. Carter. The record also reveals that Plaintiff did not even design the Logo in the first place, rendering his copyright infringement claim null.

Notwithstanding the legal and factual failings of Plaintiff's case, Plaintiff proceeds undaunted to attempt to uncover some sliver of evidence to support his contentions, including by deposing Mr. Carter. Mr. Carter is an entertainer, musician, record producer, and entrepreneur who has received 19 Grammy Awards and is one of the world's best-selling recording artists of all time. Declaration of Shawn C. Carter ("Carter Decl.") ¶ 2. He is a professional businessman, and is, among other things, the President of Roc Nation, LLC, a full-service sports and entertainment company, and the Chief Executive of a host of businesses in areas ranging from commercial real estate, to clothing, to media content production, to restaurants, to concert and music production. *Id.* He was a founder and executive of Defendant Roc-A-Fella Records, LLC and President of Defendant Island Def Jam Music Group. Mr. Carter does not recall meeting or knowing Plaintiff, nor does he recall ever having any business dealings with him. *Id.* ¶ 3. Mr. Carter has no personal knowledge of the alleged agreement concerning the Logo, much less any unique or special knowledge; he has never seen any such contract, *id.* ¶ 4, and as noted above, Plaintiff has not uncovered any competent, corroborating evidence that such a contract even exists. In fact, Mr. Carter would never have approved any agreement along the lines of what

Plaintiff describes in his various claims because the terms are unconscionable and would be, in Mr. Carter's nearly 20 years of experience, unheard of in the music industry. *Id.* ¶ 5.

Mr. Carter understands that, in response to a scheduling dispute with Plaintiff, on June 30, 2014 the Court ordered that his deposition be scheduled for August 28 or 29 (as opposed to in June, as Plaintiff had requested), [*see* Docket No. 96], but the briefing to this Court addressing the specific deposition scheduling issues that had arisen at that time occurred prior to significant developments in discovery [*see* Docket Nos. 91, 93], including the June 12, 2014 deposition of Plaintiff. As a result of these changed circumstances, as discussed below, Mr. Carter's deposition would not only be unnecessary, it would be improper. Moreover, defendants believe that this case is ready for summary judgment, and while their request to file a summary judgment motion was denied without prejudice pending the decision on an unresolved motion to dismiss, if the Court were to grant summary judgment, Plaintiff could not credibly allege that he would be entitled to more discovery from Mr. Carter given Mr. Carter's sworn lack of knowledge.

The undersigned – who filed a motion for substitution of counsel on August 20, 2014 that is pending before the Court – held a telephonic meet-and-confer with Plaintiff's counsel on August 22, 2014 to explain these circumstances and request that Plaintiff abandon his attempt to depose Mr. Carter. The parties were unable to resolve this issue, and Plaintiff's counsel declined to withdraw his notice of deposition and indicated he would oppose this motion. Mr. Carter now seeks the intervention of this Court on an expedited basis.

ARGUMENT

Federal Rule of Civil Procedure 26 allows the courts to limit the scope of discovery – including by forbidding certain types of discovery – when the burden or expense of the proposed discovery outweighs its likely benefit. *See* Fed. R. Civ. P. 26(b)(2)(C)(iii). That rule also grants the courts discretion to issue any order which justice requires to protect a party “from annoyance,

embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). This case presents the type of scenario in which courts in this district have granted protective orders prohibiting the deposition of a celebrity or high-level corporate executive. The Court should grant Mr. Carter’s requested protective order and quash Plaintiff’s notice of deposition because Mr. Carter has no unique personal knowledge relevant to key issues in this case – much less any personal knowledge relating to the central issue of whether Plaintiff’s purported contract existed – and the currently noticed deposition is being used merely to harass him.

I. MR. CARTER HAS NO UNIQUE PERSONAL KNOWLEDGE THAT WOULD NECESSITATE TAKING HIS DEPOSITION

Mr. Carter should not be subjected to a deposition because Plaintiff has not, and cannot, carry his burden to demonstrate the relevance or necessity of Mr. Carter’s testimony. *See Mandell v. The Maxon Co.*, 06 CIV. 460 (RWS), 2007 WL 3022552, at *1 (S.D.N.Y. Oct. 16, 2007) (“[T]he party seeking discovery bears the burden of initially showing relevance.”) (internal citations omitted). This Court’s power under Rule 26(c)(1) to prevent “annoyance, embarrassment, oppression, and undue burden” of parties and witnesses is all the more necessary where, as here, a party seeks to depose a well-known public figure like Mr. Carter, who is for all intents and purposes, a high-level corporate official.

There is an “additional layer of protection” against depositions of senior corporate executives, *Guzman v. News Corp.*, 09 CIV. 9323 BSJ RLE, 2012 WL 2511436, at *1 (S.D.N.Y. June 29, 2012), and such depositions are discouraged unless the putative witness “possess[es] unique personal knowledge related to the relevant issues in the case.” *Diesel Props S.r.L. v. Greystone Bus. Credit II LLC*, No. 07 Civ. 9580(HB), 2008 WL 5099957, at *1 (S.D.N.Y. Dec. 3, 2008). *See also Consol. Rail Corp. v. Primary Indus. Corp.*, 92 CIV. 4927 (PNL), 1993 WL 364471, at *1 (S.D.N.Y. Sept. 10, 1993) (“[P]ermitting unfettered discovery of corporate

executives would threaten disruption of their business and could serve as a potent tool for harassment in litigation.”). Courts routinely grant protective orders barring these “apex” depositions when the witness lacks personal knowledge of facts relevant to the action or the discovery sought. *See, e.g., Deluca v. Bank of Tokyo-Mitsubishi UFJ*, 05CIV639GELKNF, 2007 WL 2589534 (S.D.N.Y. Aug. 30, 2007); *Treppel v. Biovail Corp.*, No. 03 Civ. 3002 PKL JCF, 2006 WL 468314 (S.D.N.Y. Feb. 28, 2006).

The extra protections afforded to corporate officials are also applicable to well-known and widely recognized parties, such as Mr. Carter, who are tantamount to high-level executives. *See, e.g., Bouchard v. N.Y. Archdiocese*, No. 04 Civ. 9978(CSH)(HBP), 2007 WL 2728666, at *1 (S.D.N.Y. Sept. 19, 2007) (granting protective order prohibiting deposition of Cardinal Edward Egan in that “his position is analogous to that of high corporate or government executives”). Mr. Carter falls squarely within this category of deponents. He is one of the most well-known and best-selling music artists of all time, and is an entrepreneur and businessman who serves as the president of an entertainment conglomerate and acts as chief executive for a host of other businesses in numerous industries. *See Carter Decl.* ¶ 2. To be clear, Mr. Carter does not contend that he is immune from discovery simply by virtue of his position. He understands that the scope of discovery is broad and that he is not *per se* immune, and that a plaintiff with an arguably legitimate claim should be allowed to seek evidence to bolster good-faith allegations. *See id.* ¶ 9. However, this is not such a case, and in light of the documents and testimony already given in this matter – including Mr. Carter’s sworn declaration – and Plaintiff’s burden to support his own claims, traditional limits on discovery should apply. That is, the possible benefit of discovery from Mr. Carter is far outweighed by the burden on him, particularly in light of the lack of competent evidence from any source supporting Plaintiff’s

claims. *See id.*; Fed. R. Civ. P. 26(b)(2)(C)(iii). Plaintiff simply should not be permitted to engage in a pointless fishing expedition clearly aimed at harassing Mr. Carter and that will result in no new pertinent evidence.

In order to secure a protective order against Plaintiff's discovery abuses, Mr. Carter must demonstrate that he "has no personal knowledge of the relevant facts and no unique knowledge of those facts," *Diesel Props S.r.L.*, 2008 WL 5099957, at *1 (internal citations and quotation marks omitted), and a declaration to that effect satisfies his burden to demonstrate good cause for a protective order prohibiting a deposition, and shifts the burden to Plaintiff to prove otherwise. *See Bouchard*, 2007 WL 2728666, at *4. In his capacity as a world-renowned artist, performer, and businessman, and senior corporate official in a number of companies and business ventures, Mr. Carter has satisfied his burden by submitting a sworn declaration stating that he has no unique personal knowledge concerning the alleged agreement regarding the Logo. *See Carter Decl.* ¶¶ 3, 4, 8, 9, 11.

Plaintiff has produced no evidence (direct or circumstantial) and secured no testimony that would rebut Mr. Carter's assertions, and the record is bereft of any evidence that would be of any use in a deposition of Mr. Carter. All Plaintiff can offer to suggest that Mr. Carter has any personal knowledge of the issues mentioned above is Plaintiff's own self-serving testimony, which is plainly insufficient. He has produced no documentary evidence in this regard, and indeed, he has not even produced a copy of the alleged agreement itself. Accordingly, Plaintiff has failed to meet his burden to rebut Mr. Carter's sworn statement concerning his lack of knowledge of the above issues. *See Bouchard*, 2007 WL 2728666, at *4 (in opposing motion for protective order prohibiting deposition of Cardinal Edward Egan, plaintiff provided "no documentary evidence suggesting knowledge [of the circumstances in the complaint] on

Cardinal Egan's part" nor any circumstantial evidence "that would support an inference of knowledge"); *Diesel Props S.r.L*, 2008 WL 5099957, at *1 (affirming Judge Ellis's granting of a protective order prohibiting the deposition of the founder and worldwide head of the Diesel group of companies; defendant "offered 'no substantive evidence that [the head of Diesel] would provide any personal, non-duplicative, unique testimony pertaining to relevant information'").

Because Plaintiff cannot rebut Mr. Carter's sworn statement and demonstrate that Mr. Carter actually has "some unique knowledge" of the material issues mentioned above, this Court should issue a protective order pursuant to Federal Rule 26(c)(1) precluding Mr. Carter's deposition. *See Bouchard*, 2008 WL 2728666, at *3.

II. PLAINTIFF SHOULD BE PROHIBITED FROM DEPOSING MR. CARTER BECAUSE HE SEEKS A DEPOSITION SOLELY TO HARASS MR. CARTER

Courts seek to protect senior corporate officers from depositions because they recognize that oftentimes such depositions are used solely to harass a party or witness. Specifically, courts are concerned that "litigants may be tempted to use [depositions of senior executives] – and the disruption that they may occasion – as a form of leverage or harassment when they have little or no pertinent testimony to offer." *Louis Vuitton Malletier v. Dooney & Bourke, Inc.*, 04 CIV. 5316 RMB MHD, 2006 WL 3476735, at *12 (S.D.N.Y. Nov. 30, 2006). In such situations, "courts should not allow litigants to manipulate the federal judicial system's liberal deposition procedures to harass their adversaries." *Diesel Props S.r.L*, 2008 WL 5099957, at *1. Indeed, the "[l]ikelihood of harassment" is a "factor[]" to be considered in deciding whether to allow discovery of corporate executives." *Bouchard*, 2007 WL 2728666, at *3.

Here the court's "obligation to ensure that discovery is not misused as a tool for oppression or harassment" outweighs the policy of broad discovery permitted by the Federal Rules of Civil Procedure. *Retail Brand Alliance, Inc. v. Factory Mut. Ins. Co.*, No. 05 Civ.

1031(RJH)(HBP), 2008 WL 622810, at *5 (S.D.N.Y. Mar. 7, 2008). On the current record, Plaintiff cannot show that the benefit of the proposed discovery outweighs any hardship it would cause Mr. Carter, nor could he. The fact that Plaintiff has marshaled no proof, other than his own self-serving testimony, of Mr. Carter's involvement with the alleged agreement concerning the Logo – particularly his failure to produce the supposed written contract at issue – demonstrates that Plaintiff's goal can only be to harass Mr. Carter and disrupt his business affairs, not to ascertain relevant facts. Furthermore, it has been routine practice for Plaintiff's counsel to release a constant stream of one-sided rhetoric concerning this case to the public in order to generate sensational news coverage,¹ which supports Mr. Carter's suspicions about the real goal of this deposition – to attract as much attention and scrutiny to Mr. Carter as possible and to harass him into paying Plaintiff some settlement amount. *See* Carter Decl. ¶ 10. This is all the more reason for this Court to protect Mr. Carter from Plaintiff's concerted efforts to invade Mr. Carter's privacy and disrupt his business affairs.

While it is not determinative of his request for a protective order, courts do routinely consider the likelihood of “business disruption” in deciding whether to allow discovery of a corporate executive. *See Bouchard*, 2007 WL 2728666, at *3. Like many business executives

¹ Plaintiff's counsel has issued numerous press releases inaccurately portraying Mr. Carter as the sole or main defendant in this case in order to obtain coverage of this action. *See* Rapper Jay-Z Sued for \$7 Million Over Unpaid Royalties for Roc-A-Fella Logo, Law Offices of Gregory Berry, Esq. (July 19, 2012), Judge Denies Jay-Z's Motion to Dismiss Roc-A-Fella Royalties Lawsuit, Law Offices of Gregory Berry, Esq. (Aug. 15, 2013), Jay-Z Loses Bid To Avoid Depositions; Logo Suit Will Now Proceed To Discovery, Law Offices of Gregory Berry, Esq. (Mar. 20, 2014), *all three available at* <http://www.gregoryberrylaw.com/news/index.html>. Plaintiff's counsel's publicity has yielded sensationalized accounts every time. *See, e.g.*, Bronx clothing designer says Jay-Z owes him \$7 million in unpaid royalties for creating Roc-A-Fella's label logo, *N.Y. Daily News* (July 12, 2012), <http://www.nydailynews.com/new-york/jay-z-owes-7m-roc-a-fella-records-logo-lawsuit-dwayne-walker-article-1.1113455>; Ex-Kasowitz Atty's Client Keeps Jay-Z Royalties Suit Alive, *Law 360* (Aug. 16, 2013), <http://www.law360.com/articles/465406/ex-kasowitz-atty-s-client-keeps-jay-z-royalties-suit-alive>; Jay-Z ordered to give deposition in Roc-A-Fella logo lawsuit, *New York Post* (Mar. 27, 2014), <http://nypost.com/2014/03/27/jay-z-ordered-to-give-deposition-in-roc-a-fella-logo-lawsuit/>. The press even recently reported on a discovery letter that Plaintiff's counsel submitted to this Court, likely as a result of Plaintiff's counsel's behind-the-scenes maneuverings. *See, e.g.*, Jay Z accused of “unprofessional conduct,” *New York Post* (Apr. 29, 2014), <http://pagesix.com/2014/04/29/jay-z-accused-of-unprofessional-conduct-in-lawsuit/>.

placed in the precarious spot of an “apex” deponent, Mr. Carter is extremely busy given his responsibilities related to multiple business interests, not to mention his active career as a musician, performer, and producer. Carter Decl. ¶ 9. Having to participate in what we now know will be a demonstrably ineffective deposition – including preparation time, appearance, and transcript review – would present a tremendous burden and inconvenience for Mr. Carter, particularly because, as noted above, he has no unique personal knowledge concerning the key issues in this case,² *id.*, and as the history of this case makes clear, there is no credible evidence supporting Plaintiff’s claims in any plausible way.

A well-known person with financial success will always be prone to receiving a disproportionately large number of implausible claims compared to the average person. These claims are often based on delusion, greed, perceived opportunism, or pure fabrication, and private citizens – even those in the public eye – ought not to be subject to a litany of depositions merely because a plaintiff sees that person as an easy target. Plaintiff must show some modicum of truth to his allegations before being permitted to abuse this Court’s available tools of litigation for purposes of harassment, interference, or undeserved gain. Despite being permitted amendments and significant discovery, Plaintiff still has not done so in this matter. And, given Mr. Carter’s sworn lack of personal knowledge, *see* Carter Decl. ¶¶ 3, 4, 8, 9 11, Plaintiff can

² To the extent there are pertinent topics upon which the Court concludes Mr. Carter may have unique and personal knowledge, that information can be gathered by much less intrusive means than a deposition upon oral questions. Examples include a deposition upon written questions, interrogatories, and requests for admission. Indeed, these types of discovery tools have been deemed acceptable alternatives to oral depositions in similar cases in this district. *See, e.g., Bouchard*, 2007 WL 2728666, at *5 (permitting plaintiff to depose Cardinal Edward Egan by written questions “in the first instance” in order to “ensure that the deposition will not be used as a vehicle to embarrass or harass Cardinal Egan,” and limiting the written deposition to 25 questions “concerning the claims and defenses in this matter”); *Retail Brand Alliance, Inc.*, 2008 WL 622810, at *6 (same, with regard to plaintiff’s CEO). Should the Court conclude such discovery devices are necessary, Mr. Carter would request that they be limited to a fixed number of written questions on pertinent topics related to this case about which Mr. Carter would have unique personal knowledge. Mr. Carter also notes that in cases involving celebrities that reach the point of oral depositions, it is appropriate to institute strict limitations on access to, and scope of, the deposition and to prohibit or severely restrict videotaping of the proceedings. To be sure, Mr. Carter does not think any discovery of him is necessary, particularly given the extent of this litigation over the past several years and the absence of merit to any of Plaintiff’s claims.

hardly be motivated by a search for the truth in asking questions to which Mr. Carter has already testified that he does not know the answer. Plaintiff's lawsuit has no more merit than those other frivolous claims listed above, and Mr. Carter respectfully requests that this Court prevent Plaintiff from further abusing the judicial process.

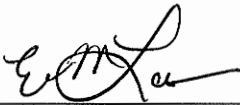
CONCLUSION

For the reasons stated herein, Mr. Carter's request for a protective order and an order quashing Plaintiff's notice of deposition should be granted.

Respectfully submitted,

Dated: August 25, 2014
New York, New York

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By:  _____

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