Joshua Koltun ATTORNEY

101 California Street
Suite 2450, No. 500
San Francisco, CA 94111

415.680.3410
866.462.5959 fax
joshua@koltunattorney.com
www.koltunattorney.com

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REDACTED VERSION

Filed herewith: Koltun Decl. (applies to both motions)

The Honorable Lucy H. Koh
United States District Court
Northern District of California
Courtroom 8-4th Floor
280 South 1st Street
San Jose, California 95113

Re: *Art of Living Foundation v. Does, Case 10-cv 5022 LHK*
Opposition to Motion to Compel Responses to Interrogatories and Requests for Production

Dear Judge Koh:

Although undoubtedly the Court has the power to reconsider its Order of November 9 [DE129] previous decision, notably absent from this motion is any serious attempt to present a reason why the Court should do so, at least at this time. The discovery requests supposedly at issue all were either aimed at (1) discovering the identity of Skywalker or fishing for information that might assist Plaintiff in discovering the identity of Skywalker; (2) discovering information concerning the identity and/or interactions among various AOL dissidents or opponents (or those "on the fence"). (3) fishing for some basis to purport to find new causes of action other than those asserted on the FAC. These are the same discovery responses that Plaintiff has presented to the Court in regards to the pending Motion for Summary Judgment. Rosenfeld Decl. (DE122, ¶7-12, Exhs. C&D.

Plaintiff also ignores meet and confer discussions in which Skywalker's counsel (i) clarified purported ambiguities in the responses, (ii) and confirmed that responses to certain requests would disclose identifying information concerning Skywalker and (iii) reconfirmed the nonexistence of certain documents. Koltun Decl., ¶ 3.

Moreover, Skywalker ***did*** provide responses on several requests that Plaintiff wrongly lists as refusals to respond. See, e.g., RFP 12, 14, 22, 23, 24. Plaintiff's real complaint is that it is dissatisfied with what it has discovered. For example, Plaintiff asked Skywalker whether he knew the identity of third parties who had placed an MP3 file of Shankar conducting Sudarshan Kriya on downloading sites on the internet. This is an ongoing problem for Plaintff that predates this litigation, and the tape at issue is ***NOT*** something that has ever been designated as a trade secret in this case. Skywalker had provided hyperlinks at one point to a site where the tape could be downloaded, although the link later went dead. Koltun Decl., ¶ 3 & Exh. I/25. Skywalker's response under penalty of perjury is that does not know their identities. Kronenberger Decl., Exh A (Nos. 15 & 16)

Plaintiff objects to these responses as being "filtered" by attorneys, but any response that would be ordered by this Court would suffer from the same defect. That is very nature of interrogatory/production responses. Plaintiff suggests that it should also be entitled to a face to face deposition of Skywalker, although it has not requested an order to that effect. In any event, the motion merely rehashes the argument previously rejected by this Court that Plaintiff has an inherent "due process" right to a face-to-face deposition of Skywalker.

Plaintiff has given no reason why the information is sought is necessary to assist the Court in resolving the dispositive motions, or indeed why the information is necessary to its ability to present its case for liability for trade secret misappropriation or copyright infringement at trial. And insofar as any of the requests that Skywalker has declined to respond to are only relevant on the trade secret claim, they are also subject to this Court's stay on discovery under CCP § 2019.210. 1/12/2012 Order at 19-20. Lastly, for reasons discussed in opposition to the motion to compel disclosure of Skywalker's identity, it is also likely the case can be disposed of at a *Daubert* hearing prior to trial.

Plaintiff proceeds on the assumption that it has an absolute right to take any discovery "permitted" by the federal rules. Mot.Compel.SW.ID at 2. But the Federal Rules themselves contemplate that the Court should manage discovery, entering appropriate orders to forbid inquiry into certain matters. FRCP 26(c).

In any event, the Federal Rules must give way to the First Amendment. This Court has already found that exposing Skywalker's identity would have serious potential chilling effects on the willingness of Skywalker and other anonymous critics to criticize AOL and Shankar. Order (DE129) at 10:23-11:11, 13:9-14:21. The responses Plaintiff seeks would provide not only Skywalker's identity or potentially identifying information, but also impinge on the free speech and free association rights of other AOL internal dissidents and/or ex-members.

As Defendants have argued, there is considerable evidence in the record already that the filing of this lawsuit is part of a coordinated effort with VVK (Art of Living India), which filed DMCA takedown notices on Skywalker's Blog (purportedly as copyright owner) and that the improper purpose of this litigation is to shut down the blogs entirely, not simply to obtain monetary damages. (See Opp. to MTC.SW.ID re the dubious theory of damages).

Discovery and developments to date bear out Defendants' contentions. Plaintiff's president Michael Fishman, in response to discussions on legal blogs of this Court's November 9th Order on anonymity, declared that they filed the lawsuit because "false statements were starting to show a lopsided perception of our humanitarian efforts to create a violent-free and stress-free society," and that AOL has "never sought to *expose* anybody who was not involved in the misconduct and have never sought to shut down *honest* debate and criticism about us and our work." Koltun Decl., Exh. E2 (emphasis added). Mr. Fischman, apparently unaware that the defamation portion of the lawsuit is no longer proceeding, informs readers

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that "this lawsuit is still active," and "I hope you will keep this letter in mind when you write about the Art of Living Foundation." *Id.*

For the same reason, Plaintiffs have declined to respond to requests for admissions going to the issue of whether Art of Living chapters in foreign jurisdictions, or Ravi Shankar, believe they have legal claims against Klim or other Does. Koltun Decl, Exh. C (RFA Nos. 77, 79-81, 83, 87-89, 93-100.) Kronenberger Rosenfeld is not claiming attorney client privilege as to any entity other than AOLFUS. Koltun Decl., ¶ 3.

This Court has previously ruled that the complained-of comments on the Blog were constitutionally protected speech. Although given the opportunity to do so on the FAC, Plaintiff did not chose to put at issue any other statements, nor did Shankar or any other foreign affiliate of AOL chose to submit itself to the jurisdiction of this Court, where any such claims would be subject to the protection of the First Amendment rights of free speech, association, and free exercise of religion.

Doe Defendants respectfully submit that Plaintiff has failed to show a sufficient basis for this Court to reconsider its November 9 Decision – at this time, or ever.

/s/

Joshua Koltun