

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEFENDANT'S REPLY TO PLAINTIFFS' MOTION FOR SANCTIONS

Mr. Oppenheim offers himself as the "client representative" of the four corporate plaintiffs that are suing Joel Tenenbaum. (Exhibit 1) He is Joel Tenenbaum's opponent. He has submitted himself to the jurisdiction of this Court by invoking its jurisdiction to make Joel defend the complaint he represents. His deposition has been duly noticed. (Exhibits 2). His counsel has been conferred with and has responded with objection and delay. (Exhibits 3).

At his deposition Mr. Oppenheim will be asked about contacts with and actions against the defendant. As "client representative" he has no privilege. If the plaintiffs raise **issues** of attorney-client privilege with respect to questions he is asked, defendant will establish **predicate** facts to show abuse of privilege and then bring the issue before the Court on further motion to compel.

The lawyer's privilege is grounded in the lawyer's role as an officer of the Court. It is an abuse of the Court and thus an abuse of the privilege to: (a) advise a client to use civil court process for a purpose other than civil recompense; (b) initiate civil litigation in which the transaction cost of the litigation dwarfs any actual damage; (c) prosecute lawsuits against individuals who lack knowledge or means to defend ; (d) impose on the federal courts the burden of processing masses of such cases.

Wherefore Defendant asks the Court to grant Defendant's motion to compel the deposition of Mr. Oppenheim at a prompt and certain date, and to hold a hearing in open court on Plaintiffs' motion for sanctions against the undersigned.

Comment [DBR1]: only notice, and not a subpoena, is necessary for a deposition of a party to the litigation. f.r.c.p. 30(b)(1)

state that our email and telephone exchange "in good faith conferred or attempted to confer" with the party to be deposed "in order to obtain [the deposition] with out court action."

recognize that our motion may (or may not) have been deficient in terms of certification and here support it. f.r.c.p. 37(a)(1)