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

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Tom Bean, et al.,

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CV 11-8030-PCT-PGR

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Plaintiffs,

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ORDER

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v.

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Pearson Education, Inc.,

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Defendant.

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Before the Court is Plaintiffs' Motion to Compel Production of Documents Requested in First and Third Sets of Document Expenses and for Award of Expenses. (Doc. 69.) Defendant filed a response opposing the motion and Plaintiffs filed a reply. (Docs. 83, 88.) For the reasons set forth below, the motion will be denied.

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BACKGROUND

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Plaintiffs filed a complaint on February 25, 2011, alleging copyright infringement and fraud. (Doc. 1.) Plaintiffs filed their First Amended Complaint on June 14, 2011, and Defendant filed an answer on July 1. (Docs. 56, 66.)

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The First Amended Complaint omitted an allegation contained in the original complaint. Citing the omitted language, Defendant contended that the First Amended Complaint dramatically reduced the number of Plaintiffs' copyright infringement claims, from 834 to six (relating to five of 178 publications). (*See* Doc. 67 at 4; Doc. 80 at 12; Doc. 81 at 3.) In the parties' Joint Case Management Report, Defendant based its proposed discovery deadlines on the limited number of claims included in the First Amended

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1 Complaint. (Doc. 67 at 12.) On August 16, 2011, the Court granted Plaintiffs' motion to file
2 a Second Amended Complaint. (Doc. 77.)

3 **DISCUSSION**

4 Federal Rule of Civil Procedure 37(a)(3)(B)(iv) provides that a party may file a
5 motion to compel if "a party fails to respond that inspection will be permitted—or fails to
6 permit inspection—as requested under Rule 34."

7 Plaintiffs move to compel Defendant to produce documents responsive to their first
8 and third sets of document requests, dated March 17 and May 6, 2011, which propound a
9 total of 14 document requests. (Doc. 69, Att. 2 at 2, 24.) These requests seek discovery
10 relating to the use of the photographs Plaintiffs licensed to Defendant for inclusion in
11 educational publications from 1986 to 2010. (*See* Doc. 88 at 10.)

12 Plaintiffs contend that Defendant has failed to produce the books in which Plaintiffs'
13 photographs were used; the licensing files for Plaintiffs' photographs; the date and quantity
14 printed for each individual printing session of the books in question; and Defendant's display
15 of Plaintiffs' photographs on any internet website. (Doc. 69 at 5.)

16 Defendant responds that it already has produced, or will produce in several weeks or
17 months, the documents relevant to the claims in the First Amended Complaint. (*See, e.g.*,
18 Doc. 83 at 3.) Defendant also states that it will produce additional materials relevant to the
19 allegations in the Second Amended Complaint. (*Id.*) Plaintiffs reply that this "mere statement
20 of intention to produce documents without actual production, several months after the
21 requests were propounded, is an insufficient response under Rule 34." (Doc. 88 at 9.)

22 While sharing Plaintiffs' concern with the pace of disclosure, the Court will deny the
23 motion to compel. As set forth in the Court's scheduling order, discovery is to be completed
24 by January 6, 2012. (Doc. 78.) The Second Amended Complaint was filed August 16, 2011.
25 (Doc. 85.) Defendant has indicated that it is in the process of providing the disclosure sought
26 by Plaintiffs. Under these circumstances the Court concludes that a motion to compel is
27 premature.

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