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VEOH NETWORKS, INC.

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **WESTERN DIVISION**  
19

20 UMG RECORDINGS, INC., *et al.*,  
21 Plaintiffs,

22 vs.

23 VEOH NETWORKS, INC. *et al.*,  
24 Defendants.

Case No. CV 07 5744 – AHM (AJWx)

Discovery Matter

**DECLARATION OF REBECCA  
LAWLOR CALKINS IN SUPPORT  
OF VEOH NETWORKS, INC.'S *EX  
PARTE* APPLICATION FOR AN  
ORDER COMPELLING  
PLAINTIFFS' COMPLIANCE WITH  
PRIOR COURT ORDER TO  
PROVIDE SUPPLEMENTAL  
RESPONSES AND PRODUCTION  
OF DOCUMENTS**

Discovery Cut-Off: January 12, 2009

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LA:225964.1

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1 **DECLARATION OF REBECCA LAWLOR CALKINS**

2 I, Rebecca Lawlor Calkins, declare as follows:

3 1. I am an attorney at the law firm of Winston & Strawn LLP, attorneys for  
4 Defendant Veoh Networks, Inc. ("Veoh") in this matter. I am licensed to practice  
5 before the Courts of the State of California and this United States District Court. I  
6 have personal knowledge of the matters set forth herein, and if called as a witness,  
7 could and would competently testify thereto.

8 2. When it became clear that UMG had not served, by mail or otherwise,  
9 the supplemental written responses or all documents of the type previously ordered in  
10 Grouper and MySpace, Veoh promptly notified UMG of its concerns. In an effort to  
11 resolve the matter informally, Veoh sent a letter, requesting that UMG comply with  
12 the Order by October 13. UMG refused. Counsel for UMG received notice on  
13 October 10 that Veoh would file this *ex parte* application if UMG did not comply with  
14 this Court's Order by October 13. Attached hereto as Exhibit 1 is a true and correct  
15 copy of this October 10 letter.

16 3. On October 13, Counsel for UMG indicated that UMG would oppose this  
17 *ex parte* application. Attached hereto as Exhibit 2 is a true and correct of UMG's  
18 October 13 letter. I called UMG counsel Brian Ledahl and Benjamin Glatstein on  
19 October 15 in an attempt to follow up on my meet and confer and notice letter sent  
20 October 10, 2008. I left a voicemail for each Mr. Ledahl and Mr. Glatstein asking for  
21 a return call. I did not receive a return call from either Mr. Ledahl or Mr. Glatstein on  
22 October 15.

23 I again attempted to reach Mr. Ledahl by telephone the morning of October 16  
24 in an attempt to further meet and confer. I got Mr. Ledahl's voicemail and left a  
25 message asking for a return call as soon as possible. When I did not hear back from  
26 Mr. Ledahl by midday, I telephoned him again and left another voicemail asking for a  
27 return call. I did not hear back from Mr. Ledahl on October 16 either.

1 Mr. Glatstein returned my call on October 16. During our telephone  
2 conversation, I discussed Plaintiffs' counsel's October 13 letter responding to my  
3 October 10 meet and confer and notice letter. I explained to Mr. Glatstein that I  
4 wanted to discuss whether there was a possibility that Plaintiffs' counsel would  
5 consider complying with the Court's August 25 Order, as requested in my October 10  
6 letter. Mr. Glatstein said he was aware of the letters but did not have them in front of  
7 him at the time. Mr. Glatstein stated he would find out if Plaintiffs' position had  
8 changed from the position stated in Plaintiffs' counsel's October 13 letter and let me  
9 know. I told Mr. Glatstein that if that was the case he should let me know right away.  
10 Mr. Glatstein agreed.

11 On October 17 shortly after 1:00 p.m. I received a voicemail from Mr. Ledahl.  
12 He stated he had Mr. Glatstein with him. Mr. Ledahl stated that he wanted to discuss  
13 certain of Plaintiffs' discovery issues raised in letters sent by Mr. Ledahl on October  
14 16. He did not respond to my request to Mr. Glatstein the day prior, nor did he give  
15 any indication that Plaintiffs would consider complying with the Court's August 25  
16 Order as requested in my letter and during my call with Mr. Glatstein. Mr. Ledahl  
17 then stated he would be unavailable for the rest of the day and not available again until  
18 Tuesday to speak. Neither Mr. Ledahl nor Mr. Glatstein responded to my inquiry  
19 regarding compliance with the Court's Order.

20 4. Attached hereto as Exhibit 3 is a true and correct copy of the relevant  
21 portions of transcript from the August 25, 2008 hearing.

22 5. This Court's March 17, 2008 Order in the MySpace action specifically  
23 addressed documents relating to Plaintiffs' viral marketing as well as financial  
24 documents deemed "potentially vital" by this Court to a defendant's (like Veoh) ability  
25 to properly defend against UMG's damages claims. On March 17, 2008, after  
26 extensive briefing on the issue in MySpace, this Court rejected UMG's ongoing efforts  
27 to withhold relevant financial documents, ordering it to produce documents relating to  
28 the revenues, profits, and value of the allegedly infringed works. This Court stated in

1 no uncertain terms that documents evidencing Plaintiffs' revenues and profits were not  
2 only relevant, they were likely "vital," noting:

3 evidence of the value of the copyrighted works and UMG's lost revenues  
4 or lost profits, if any, is potentially vital to MySpace's ability to properly  
5 defend itself against UMG's damages claims.

6 Attached hereto as Exhibit 4 is a true and correct copy of this March 17,  
7 2008 Order.

8 6. In its November 8, 2007 Order re Discovery Disputes in the Grouper  
9 matter, the Court ordered UMG to produce documents and information relating to  
10 Plaintiffs' viral marketing. For example, the Court ordered UMG to: 1) confirm the  
11 division(s) within UMGD responsible for viral marketing; 2) identify which primary  
12 employees conduct its viral marketing activities; and 3) to produce all reports  
13 identifying which of UMG's works are marketed virally through UMGD. Attached  
14 hereto as Exhibit 5 is a true and correct copy of this November 8, 2007 Order.

15 7. Attached hereto as Exhibit 6 is a true and correct copy of Grouper's  
16 Notice of Motion and Motion for Sanctions against UMG.

17 8. UMG's own custodian list reflects a deficient search, as it does not  
18 identify a single intern as a custodian whose files were searched. Attached hereto as  
19 Exhibit 7 is a true and correct copy of UMG's list of custodians and search.

20 9. Despite having repeatedly forced motions to compel on this subject by its  
21 conduct, and despite having repeatedly lost on the issue before this Court, UMG still  
22 refuses to produce documents and feigns confusion, maintaining that the term "viral  
23 marketing" is too vague and ambiguous to permit a response. Attached hereto as  
24 Exhibit 8 is a true and correct copy of the relevant responses contained in UMG's  
25 response to Veoh's first set of requests for production.

26 10. In the March 27, 2008 Order on MySpace's Motion to Compel, the Court  
27 again ordered UMG to produce documents responsive to requests relating to UMG's  
28 revenues, profits, and value of content. ordered UMG to produce documents

1 responsive to seven of nine requests that MySpace moved to compel relating to the  
2 promotional value of various websites. Attached hereto as Exhibit 9 is a true and  
3 correct copy of this March 27, 2008 Order.

4 11. Attached hereto as Exhibit 10 is the Court's August 25, 2008 Order.  
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6 I declare under penalty of perjury under the laws of the United States of  
7 America, the foregoing is true and correct. Executed on October 17, 2008, in Los  
8 Angeles, California.  
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10 /s/ Rebecca Lawlor Calkins  
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