

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; BMG MUSIC; CAPITOL RECORDS INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.,

Plaintiffs,

v.

LIME WIRE LLC; LIME GROUP LLC; MARK GORTON; GREG BILDSON; and M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

**06 Civ. 5936 (GEL)
ECF CASE**

DECLARATION OF KATHERINE B. FORREST IN SUPPORT OF PLAINTIFFS' OPPOSITION TO (1) DEFENDANTS' OBJECTIONS TO PLAINTIFFS' MOTION TO STRIKE EXHIBITS FILED AS PART OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND DEFENDANTS' MOTION TO STRIKE AND (2) DEFENDANTS' MOTION TO EXCLUDE THE DECLARATIONS OF THOMAS SEHESTED, ANDREW KEMPE, AND KATHERYN COGGON FOR PLAINTIFFS' FAILURE TO DISCLOSE FACTUAL WITNESSES

I, KATHERINE B. FORREST, hereby declare as follows:

1. I represent plaintiffs in the above-captioned action. I submit this declaration in support of plaintiffs' opposition to (1) Defendants' Objections to Plaintiffs' Exhibits Filed As Part of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment and Defendants' Motion to Strike, and (2) Defendants' Motion to Exclude the Declarations of Thomas Sehested, Andrew Kempe, and Katheryn Coggon for Plaintiffs' Failure to Disclose Factual Witnesses.

2. On September 26, 2008, defendants in the above-captioned case filed: (i) Defendants' Objections to Plaintiffs' Exhibits and Deposition Excerpts to Their Motion for Partial Summary Judgment and Defendants' Motion to Strike Plaintiffs' Exhibits and Deposition Excerpts, (ii) Defendants' Settlement Related and Pre-August 2003 Objections to Plaintiffs' Exhibits To Their Motion for Partial Summary Judgment and Defendants' Motion to Strike Plaintiffs' Exhibits, and (iii) Defendants' Motion to Exclude Plaintiffs' Proffered Expert Summary Judgment Evidence from the Depositions and Reports of Ellis Horowitz, Ph.D and Richard P. Waterman, Ph.D. On November 25, 2008, defendants filed reply papers in further support of those motions, in which they withdrew a number of objections made in their September 26 opening papers. (*See* Defs.' 11/25/08 Reply In Further Supp. of Defs. Objections to Pls.' Exs. and Dep. Excerpts to Their Motion for Partial Summary Judgment and Defs.' Mot. to Strike Pls.' Exs. and Dep. Excerpts, Attachments A & B.) Under my supervision and at my direction, defendants' November 25, 2008 reply papers were reviewed and we determined that defendants have now withdrawn 69 out of their 90 original exhibit objections based on authenticity, 50 out of their original 128 exhibit objections based on hearsay, and 14 out of their original 31 exhibit objections based on relevance. (*Compare* Defs. 9/26/08 Mot. to Strike, Attachment A *with* Defs. 11/25/08 Reply Mot. to Strike, Attachment A.) Defendants have also now withdrawn their objection to the admissibility of Dr. Ellis Horowitz's report on the basis of it having been submitted "unsworn" by Dr. Horowitz. (*See* Defs. 11/25/08 Reply Mot. to Strike, Attachment B, at 9.)

3. In plaintiffs' October 24, 2006 Rule 26(a) disclosures, the very first name listed as "likely to have discoverable information" was "Thomas Carpenter . . . MediaSentry Services, SafeNet, Inc . . .". (*See* Plaintiffs / Counterclaim Defendants' Initial Disclosures

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure (attached hereto as Exhibit 492) at 2.)

4. Defendants never requested depositions of Thomas Carpenter or any representative of MediaSentry, including Andrew Kempe.

5. Defendants also never requested depositions of Thomas Sehested or Katheryn Coggan.

6. Plaintiffs disclosed a total of 86 individuals in their 26(a) disclosures. (*See* Exhibit 492.) Defendants requested and took the depositions of 11 of these 86 disclosed individuals.

7. On January 31, 2008, my partner, Teena-Ann Sankoorial, wrote a letter to defendants' counsel to inform defendants of the 31 (now 30) music tracks downloaded using the LimeWire application that plaintiffs intended to rely on to support their direct infringement claims. (*See* Jan. 31, 2008 letter from Teena-Ann Sankoorial to Joseph Cohen (submitted herewith as Ex. 495).) Defendants served no document requests related to these tracks, took no depositions of anyone with knowledge of the alleged infringement of these tracks and asked no deponent any questions relating to these tracks.

8. Accompanying this declaration is Volume XIV containing exhibits and declarations as follows:

VOLUME XIV

- **EXHIBIT 492** is a true and correct copy of Plaintiffs / Counterclaim Defendants' Initial Disclosures Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, dated October 24, 2006.

- **EXHIBIT 493** is a true and correct copy of Defendants Lime Wire LLC's, Lime Group LLC's, Mark Gorton's and Greg Bildson's Initial Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1), dated October 24, 2006.
- **EXHIBIT 494** is a true and correct copy of Defendants' First Supplemental Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1), dated Feb. 22, 2008.
- **EXHIBIT 495** is a true and correct copy of a letter from Teena-Ann Sankoorial to Joseph Cohen, dated Jan. 31, 2008.
- **EXHIBIT 496** is a true and correct copy of a CD-ROM requested by plaintiffs and provided to plaintiffs by defendants on August 4, 2008, containing the files Susan Cates said in her declaration, dated July 17, 2008, that she had downloaded.
- **EXHIBIT 497** is a compilation of true and correct copies of 35 publicly filed judgments entering, *inter alia*, permanent injunction and damages orders enjoining various defendants from directly or indirectly infringing plaintiffs' rights under federal or state law.

Declarations

- Cuneo, Elizabeth
- Kempe, Andrew
- Minarovich, Siobhain
- Sehested, Thomas

I declare under penalty of perjury that the above is true and correct.

Executed on December 5, 2008

A handwritten signature in black ink, appearing to read "K. B. Forrest". The signature is written in a cursive style with a prominent initial "K".

Katherine B. Forrest