

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS et al.,

Plaintiffs,

v.

LIME WIRE LLC, et al.,

Defendants.

)  
) Case No. 06-CV-5936 (KW)

)  
) **ECF CASE**

)  
) **PUBLIC VERSION**

**DECLARATION OF MARK GORTON IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY  
INJUNCTION FREEZING DEFENDANTS' ASSETS**

I, Mark Gorton, declare as follows:

1. My name is Mark Gorton. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

**BACKGROUND**

2. I was born in 1966 and grew up in Oradell, New Jersey. I went to public school in Oradell and graduated valedictorian of my high school class. I then went to Yale University where I studied electrical engineering. I always enjoyed math and science, and I pursued engineering at the suggestion of my father. I graduated in 1988 and went to Stanford University where I received a master's degree in electrical engineering.

3. I focused my engineering studies on circuits and control systems, which entailed a knowledge of mathematics and had a number of applications in, for example, robotics and aircraft mechanics. My studies also involved digital signal processing which involves the use of computer algorithms to analyze and measure signals using mathematical techniques.

4. After Stanford, I went to work for Martin Marietta which is now part of Lockheed Martin. I worked in a division that was tasked with developing sophisticated electronics that would be used for electronic battlefield scenarios. Among other things, I worked with a group of engineers to develop a modem for the U.S. Air Force that could work in the face of enemy signal jamming.

5. I left Martin Marietta after two years and went to pursue an MBA at Harvard Business School. I had always been interested in business, and I believed that business school was a good way to make the transition from engineering to business. After graduation in 1993, I decided to move to New York City to work as a trader in the fixed income proprietary trading group at Credit Suisse First Boston (“CSFB”).

6. My background in engineering and mathematics was good training for trading of financial instruments, particularly complex derivatives. For example, bonds involve a known series of cash flows over time and their valuation requires a mathematical discipline, building quantitative models and conducting historical studies on fluctuation of prices. I was successful in my trading and out of a number of traders in our group, I was the most profitable trader and the most consistently profitable trader over the course of about four years. My earnings from CSFB formed the basis for my capital which I have compounded over time through my investing.

#### **INVOLVEMENT IN BUSINESSES OTHER THAN LIME WIRE**

7. In early 1998, I left CSFB to form Tower Research Capital LLC (“Tower Research”). I was interested in pursuing a variety of trading strategies that I wasn’t able to do within CSFB, where traders in the fixed income department were not allowed to trade stocks. I invested my earnings from CSFB alongside Alistair Brown, a colleague and fellow engineer.

We rented a loft in Greenwich Village and plugged in our computers to start trading. We also engaged an accountant and a lawyer to help us structure the hedge funds and management company to begin Tower Research, which was founded in March 1998.

8. Tower Research is a financial services firm specializing in quantitative trading and investment strategies. [REDACTED]

[REDACTED]

9. [REDACTED]

10. Tower Research also became registered as a commodity trading advisor and commodity pool operator regulated by the U.S. Commodity Futures Trading Commission [REDACTED]

[REDACTED] Tower currently employs nearly [REDACTED] investment professionals worldwide, including portfolio managers, operations, accounting, IT systems, software infrastructure, legal and compliance.

11. [REDACTED]

[REDACTED]. So Alistair and I founded Lime Brokerage LLC to pursue this business opportunity.

12. Lime Brokerage LLC was formed in 2000. Lime Brokerage is an SEC-registered broker-dealer in 37 U.S. states and territories that offers super fast, very high throughput market access to computerized traders. Today Lime Brokerage has approximately [REDACTED] employees. It has offices in New York, Waltham, MA and Jersey City, NJ. [REDACTED]

[REDACTED]. Lime Brokerage executes trades on behalf of approximately [REDACTED], and it maintains capital accounts at clearing brokers in order to support its customers' trading.

13. 377 Tower Realty LLC was created in 2000 and was fully funded by me at that time. [REDACTED]

[REDACTED].

14. In 2005 a college friend of mine, Dr. Richard Kim, and I were discussing how he spent over 3 hours each day filling out medical paperwork. Dr. Kim expressed frustration that such a large part of his time was spent doing repetitive paperwork. After much discussion, we decided that his expertise and understanding of the medical system and my software development expertise could be combined to help make his and other doctors' lives more efficient, so together, we decided to pursue this business opportunity that ultimately became Lime Medical LLC. Lime Medical is a software company that provides software to hospitals, medical practices, and doctors. We launched Lime Medical LLC with the intention of producing a software product that would help doctors deal with the large amount of paperwork that comes with their jobs. After 4 years in development, Lime Medical recently rolled out iPatient to the Sutter hospital system in California, and we are now in the process of rolling out the product to

other hospitals. Lime Medical now has 3 employees and is looking to grow. Lime Medical is not yet cash flow positive and depends upon me through entities in which I have an interest for continued funding. To date, approximately [REDACTED] has been invested in Lime Medical by me and/or entities in which I have an interest.

15. Through my experience managing many software projects, I noticed over the years that some software teams spent years struggling to produce very little while other teams were able to produce good working products in a matter of days or weeks. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. I perceived there was an opportunity to allow people to share a wide variety of open source websites, and I formed Lime Labs LLC with the intention of building a suite of tools to allow people to do just that.

16. Lime Labs LLC was formed in 2006. Contained within Lime Labs are several discrete yet interconnected software projects. Lime Bits is an easy to use website building tool that allows people to share websites and pieces of websites. The intent is to foster a community of website developers who virtually collaborate to create a rich set of tools with which to construct website. Lime Labs also offers people hosting, domain name registration (LimeDomains) and free application installation (LimeApps) in order to further make it easier for people to create and manage websites. Lime Labs also provides certain software development services to Lime Wire. Lime Labs has offices in New York City and in Noida, India. Altogether it has about 100 employees. It is still in product development mode, is not yet profitable, and is primarily dependent upon me (either directly or through entities in which I have

an interest) for its funding. To date, approximately [REDACTED] has been invested in Lime Labs by me and/or entities in which I have an interest. Based on historical funding needs, I estimate that absent continued funding Lime Labs [REDACTED] [REDACTED].

### **NOT-FOR-PROFIT ORGANIZATIONS AND CONTRIBUTIONS**

17. In addition to founding and working with businesses in various sectors, I also am, and have been for some time, deeply involved with several not-for-profit organizations.

#### **OpenPlans**

18. In 1999, I founded The Open Planning Project (currently d/b/a OpenPlans), a 501(c)(3) organization located in New York, New York, and with a staff of approximately 45. OpenPlans has several areas of focus. The Livable Streets Initiative within OpenPlans advocates for greener more sustainable forms of transportation, reducing traffic, and transforming our streets to safer pedestrian oriented places. Projects, including Streetsblog (streetsblog.org) and Streetfilms (streetfilms.org), are building a powerful movement for livable streets. Today, the Streetsblogs reach more than 175,000 monthly readers, and Streetfilms have been viewed online more than 2.5 million times. Attached hereto as Exhibit A is an article describing, among other things, the Livable Streets Initiative work of OpenPlans.

19. The Civic Works division of OpenPlans is focused on getting government to open their data and software systems. The open government movement is in its embryonic stage, and OpenPlans is a key player helping to catalyze a profound change in how our governments function. When government agencies free their data, advocates, companies, developers, and regular citizens can make use of these data to make smart decisions and improve neighborhoods. OpenPlans has helped municipal agencies in places like San Francisco and New York make their

data public in accessible and useful ways through initiatives like Open311 (open311.org) and NY Transit Data (nytransitdata.org).

20. The OpenGeo project at OpenPlans started and continues to develop GeoServer, an open source mapping engine that opens data in standard formats. It's been downloaded over 400,000 times, and is used in production by hundreds of government agencies, NGO's, and companies saving them millions of dollars. Major users of the software include the state of Massachusetts, Portland's main transit agency, New York City, San Francisco, the national mapping agencies of France, Spain, UK, Norway, Finland, Brazil, Guatemala, Italy, Denmark, and the Netherlands, the World Bank, the Gates Foundation, the United Nations (WHO, WFP, FAO, UNDP and more), European Union's JRC, University of Virginia, Duke, Penn State, the Global Biodiversity Information Facility, the Ocean Biogeographic Information System, OpenCongress, DigitalGlobe, Infoterra, NOAA, and many others.

21. Since its founding, I have always been OpenPlans' largest contributor.

**Other Charitable Activities**

22. In addition to supporting organizations that I have founded, I support a number of organizations in the sustainable transportation and livable streets movement. [REDACTED]

[REDACTED]

[REDACTED]. In each of the past 6 years, my contributions have made up between [REDACTED] of Transportation Alternatives budget. I also fund the Tri-State Transportation Campaign and the Institute for Transportation and Development Policy (ITDP). These also are organizations devoted to encouraging people in cities to walk, ride their bicycles, or use mass transit as alternatives to driving, and to making cities more livable.

23. In addition to supporting the cause of greener transportation, I have also been supporting groups focused on improving the state of governance in New York State. In 2010, I have made donations to a variety of not-for-profit organizations including NYPIRG, Common Cause New York, and the Brennan Center for Justice.

**MY INVESTMENTS**

24. Since completing business school, I have been an active investor. Over the last decade my trading and investments have done well, and I have been fortunate to have made significant returns. For the most part, and other than to start new businesses and make charitable contributions, I have re-invested the gains on my investments. Together with my wife Jody, I only own one home in which we live with our 4 children. The bulk of my wealth has come from my investing and trading activities.

25. Since approximately August of 2003, I have received approximately [REDACTED], either directly or indirectly, from Lime Wire LLC. I understand that taking into account my interests in investment distributions to Lime Group and Lime Wire FLP, that amount increases to approximately [REDACTED]

26. Neither I nor any entity in which I hold an interest has received a distribution from Lime Wire LLC since February of 2008. Since that time, Lime Wire's profits have largely been re-invested in a separate business unit referred to as LimeWire Store, which is an on-line music service offering licensed downloads of digital sound recordings, in the aim of working collaboratively with the recording industry.



**ADDITIONAL ENTITIES NAMED BY PLAINTIFFS**

27. I have reviewed the list of entities defined by Plaintiffs as “Defendant Affiliates” in their proposed Preliminary Injunction Freezing Defendants’ Assets. To my knowledge, a number of the entities listed as Defendant Affiliates no longer exist including, A&M Roadhouse, Lime Overseas Fund, Ltd., Lime Capital Management Administrators, LLC, Lime Fund LLC, Tower Research Capital Holdings Inc., and Lime Capital Management LLC.

28. Although, Lime Lock LLC uses the Lime name, I am only tangentially involved in Lime Lock LLC. Lime Lock LLC is founded and run by Alexander Zehnbacht. I indirectly own a [REDACTED] interest in [REDACTED] of Lime Lock.

29. Six of the entities listed by Plaintiffs -- [REDACTED]  
[REDACTED]  
[REDACTED] -- are some of the private investment funds managed by Tower Research on behalf of numerous investors. [REDACTED]  
[REDACTED].

30. Plaintiffs have included several Family Limited Partnerships in their list of “Defendant Affiliates.” For each of these, I am a limited partner with between a [REDACTED] interest.

**NO DISSIPATION OF ASSETS**

31. For many years, my accountants suggested that I talk to an attorney about estate and tax planning measures due to the breadth of my assets. In or around January of 2005, I finally took their advice. Following those discussions, my attorneys began setting up several family limited partnerships to which we agreed a portion of my and my immediate family’s assets would be transferred. Although the formal organization of the M.J.G. Lime Wire Family Limited Partnership was completed in June of 2005, the structure and assets to be contributed

was decided long before then. The establishment of the LW FLP was completed months before the RIAA sent a cease and desist letter regarding the LimeWire software.

32. While in 2005 I transferred many of my assets into limited partnerships for estate and tax planning purposes, I also maintained, and continue to maintain a significant portion of my assets outside of the FLPs. My wife and I jointly own a brownstone in Manhattan which we purchased in 2005 for \$4.8 million, and we maintain three bank accounts in New York holding approximately \$17 million. I also hold in my own name several direct investments worth another approximately \$2 million.

33. I have never “secreted” or otherwise transferred any of my assets in an effort to hide them from the plaintiffs in this case or anyone else. I do invest indirectly in some offshore hedge funds as part of my ordinary investing activities, and I have indirect ownership interests in entities that own subsidiaries in other countries, as part of their normal business activities. But I have no personal off-shore bank accounts, and have never set up any off-shore entities to hold my personal assets. Other than the offshore hedge fund investments, all of my assets are maintained within the United States.

#### **PLAINTIFFS’ PROPOSED ASSET FREEZE**

34. I have reviewed the Plaintiffs’ Motion for Preliminary Injunction to Freeze Defendants’ Assets. I do not believe there is any reason to freeze any portion of my assets since I have not and have no intention to hide my assets or otherwise make them unavailable for payment of any judgment against me in this action. Indeed, as I have for the past 12 years, my plan is to continue growing my assets through continued investments.

35. A strict freeze of my assets has the potential to destroy value and reduce the potential amount that any creditor could collect from me. Historically I have made significant profits investing my assets. If any of my assets are frozen, I will lose the opportunity to invest

my capital at which historically I have been successful. By restricting my ability to continue funding Lime Labs and Lime Medical, I will likely lose my entire investments in these companies, and the chance that these start-up companies will reach profitability will be eliminated. A half completed project without funding has no value, but a company that reaches the stage of being cash flow positive has ongoing value. In addition, an asset freeze on either Lime Brokerage LLC or Tower Research Capital LLC or any of its investment funds has the potential to be damaging to these companies [REDACTED]

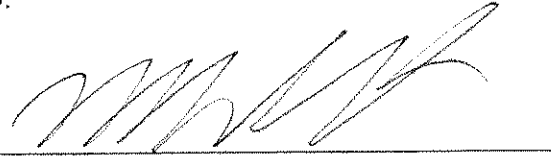
[REDACTED]

36. My wife Jody and I share a credit card which we use like most people in this country for many regular expenses such as purchasing food and clothing, household supplies, and normal everyday living. Prohibiting the use of any credit card issued to me singly or jointly with my wife for any purpose would cause extreme and unnecessary inconvenience to my family. Having to get approval from a fiscal agent for any payment, including purchases of food and clothing for ourselves and our children, would be very time consuming, burdensome, and would be a hardship for our average daily lives.

37. In the event that the Court determines that an order freezing a portion of my assets is appropriate, I respectfully request that the Court enter an order specifying an amount of assets to be frozen. I can then identify for the Court assets to be frozen that are equal in value to the specified amount but that, if frozen, would have the least negative impact on my family and the businesses and not-for-profits I regularly work with.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in New York, NY on June 30, 2010.

A handwritten signature in black ink, appearing to read 'M. Gorton', is written above a solid horizontal line.

Mark Gorton