

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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,	)	06 Civ. 05936 (KMW)
INC.; VIRGIN RECORDS AMERICA, INC.;	)	ECF CASE
and WARNER BROS. RECORDS INC.,	)	
	)	
Plaintiffs,	)	
	)	<b><u>PUBLIC VERSION</u></b>
v.	)	
	)	
LIME WIRE LLC; LIME GROUP LLC;	)	
MARK GORTON; GREG BILDSON; and	)	
M.J.G. LIME WIRE FAMILY LIMITED	)	
PARTNERSHIP,	)	
Defendants.	)	
	)	

**DECLARATION OF ANTHONY M. LENDEZ, CPA, CFE, CFF  
IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION FREEZING DEFENDANTS' ASSETS**

Anthony M. Lendez, CPA, CFE, CFF being duly sworn, deposes and states as follows:

**Background and Scope**

1. I am a partner of BDO Consulting, a division of BDO Seidman LLP ("BDO"). I am a Certified Public Accountant and Certified Fraud Examiner and also have the designation of Certified in Financial Forensics. I have over 30 years of experience in accounting and

auditing. I have worked as an Audit Manager for KPMG LLP where I was responsible for performing audits of companies in various industries, including companies registered with the U.S. Securities and Exchange Commission (“SEC”). I have also worked as a Technical Manager for the SEC Practice Section of the American Institute of Certified Public Accountants where I investigated alleged audit failures involving national and local public accounting firms. At BDO, I direct the Financial Reporting Disputes and Investigations practice, which encompasses securities litigation, accountants’ professional liability, and corporate internal investigations. I assist companies with matters involving alleged financial statement fraud and management fraud. I also assist counsel in evaluating audit, accounting, and financial reporting issues and in preparing for trial. I have been involved in various high profile securities litigation matters and investigations, including but not limited to the Enron, New Century, Fannie Mae and AOL Time Warner matters. Specifically on AOL Time Warner, I served as the accounting advisor to the Independent Examiner, who was retained by AOL Time Warner pursuant to a Consent Order between the company and the SEC to investigate the company’s accounting for online advertising revenue to determine whether the company’s accounting practices complied with U.S. generally accepted accounting principles (“GAAP”). Prior to joining BDO Consulting, I was a member of BDO’s National Assurance Department, where I assisted in the development of the Firm’s audit and accounting guidance and related training materials, and responded to technical inquiries involving the application of audit, accounting, financial reporting, and Firm policy matters.

2. I was retained by Defendants and Defendants' counsel to quantify the profits<sup>1</sup> of the software business of Lime Wire LLC ("Lime Wire") from its inception in August 2000 through present.<sup>2</sup> In addition, I was asked to quantify funds disbursed from Lime Wire to Mark Gorton ("Gorton") as well as to entities that he founded and/or in which he has or had an ownership interest (referred to herein as "related entities"<sup>3</sup>), from August 4, 2003 through present<sup>4</sup> (the "relevant period"). This quantification included disbursements such as distributions, compensation, and other payments. I also performed data analysis of the cash disbursement activity reports of Lime Wire, Lime Group LLC ("Lime Group"), and M.J.G. Lime Wire Family Limited Partnership ("Lime Wire FLP") to evaluate whether there was any evidence suggesting a possible dissipation of assets.<sup>5</sup> Other BDO professionals, whom worked under my supervision and direction, have assisted me in this matter.
  
3. Based on discussions with the company and a review of the relevant documents, I gained an understanding of the corporate structures of Lime Wire, Lime Group, and Lime Wire FLP as well as Gorton, his family members, and his related entities. I also independently conducted my own investigative due diligence to corroborate my understanding of the above.

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<sup>1</sup> The term "profits" referred to herein is defined as net income as reflected in Lime Wire LLC's accounting records.

<sup>2</sup> At the time I conducted my analyses, the most recent financial data available for Lime Wire was through the month ended April 30, 2010.

<sup>3</sup> The term "related entities" referred to herein was defined by counsel. As discussed further below, I conducted independent research to confirm the related entity information provided by counsel.

<sup>4</sup> The cash disbursement activity reports for Lime Wire were provided through May 31, 2010 whereas the reports for M.J.G. Lime Wire FLP and Lime Group LLC were provided through June 4, 2010 and June 5, 2010, respectively. Therefore, the date range for cash disbursements varies slightly.

<sup>5</sup> The term "dissipation of assets" was defined by counsel as the intentional moving or concealment of assets in an attempt to hide, protect or otherwise shield them from potential judgment creditors.

Specifically, I performed public records research to identify and confirm the existence of Gorton's related entities beyond the related entities provided by counsel.

**Quantification of Profits Related to Lime Wire's Software Business**

4. To quantify the profits of the software business of Lime Wire, I obtained the monthly financial statements for Lime Wire from the company.<sup>6</sup> I verified the mathematical accuracy of the financial statements. In addition, I verified the completeness of the financial statements by reperforming the exporting process from Lime Wire's general ledger accounting system on a test basis and by agreeing the consolidated revenue and profit amounts to the respective year's income tax return. Based on my understanding of Lime Wire's business and my experience with the high technology and software industries, I reviewed the various income statement line items to identify the revenue and expenses related to the software business. Because Lime Wire's financial statements included financial information relating to LimeWire Store, a separate business unit from Lime Wire's software business, I made certain adjustments to exclude the revenue and expenses related to this non-software-related business unit. To deduct LimeWire Store's financial information from Lime Wire's financial statements, I obtained an allocation schedule from the company, comprising the revenue and expenses for LimeWire Store, and analyzed it for reasonableness. I also

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<sup>6</sup>



gained an understanding of the company's methodology for preparing the allocation schedule. This allocation schedule consisted of a line-by-line analysis of the income statement line items that were allocated between the software business and LimeWire Store. Expenses were allocated based on employee headcount and/or the nature of the expense incurred. Once the LimeWire Store revenue and expenses were deducted from Lime Wire's financial statements, I analyzed the revenue and expenses related specifically to the software business, calculated the profits for the relevant period and summarized the profits by year.

5. Based on my calculations, total profits for Lime Wire's software business were [REDACTED] from its inception in August 2000 through April 30, 2010. Had LimeWire Store's revenue and expenses been considered in my calculations, total profits for Lime Wire would have been [REDACTED].<sup>7</sup> A summary of Lime Wire's software business-related profits by year is referenced as *Exhibit A* of this declaration.

**Quantification of Funds Disbursed from Lime Wire to Mark Gorton or Related Entities**

6. To quantify funds disbursed to Gorton and his related entities, I obtained the cash disbursements activity reports for the financial institution accounts of Lime Wire, Lime Group and Lime Wire FLP. These reports included distributions, system generated checks, manual checks, automated clearing house ("ACH") payments, and wire transfers for the

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<sup>7</sup> [REDACTED]

relevant period. I was advised by the company that the financial institution accounts and the related cash disbursement activity included in the data analysis were a complete and accurate listing of all financial institution accounts of Lime Wire, Lime Group and Lime Wire FLP. I verified the completeness of the cash disbursement activity reports by reviewing a sample of the bank reconciliations and agreeing the cash balances to the respective bank statements and balance sheets. In addition, the cash balances per Lime Wire's consolidated balance sheets were agreed to the respective year's income tax return.

7. To perform my analysis, queries<sup>8</sup> were developed to identify funds disbursed from Lime Wire to Gorton personally, as well as to his related entities. To capture both "direct" disbursements from Lime Wire to Gorton, as well as "indirect" disbursements to Gorton through Lime Group or Lime Wire FLP, I analyzed disbursements not only from Lime Wire to Gorton, but also disbursements from Lime Group and Lime Wire FLP to Gorton. To avoid double-counting, I allocated disbursements from Lime Group and Lime Wire FLP to Gorton based on the percentage of incoming funds Lime Group and Lime Wire FLP received from Lime Wire during the relevant year.<sup>9</sup> For example, assume that in 2005, Lime Wire disbursed \$100,000 to Lime Group and Lime Group disbursed \$80,000 to Gorton. Also assume that, in 2005, total incoming funds for Lime Group were \$200,000. In this example, Lime Wire was the source of 50% of Lime Group's funds in 2005 ( $\$100,000 / \$200,000$ ).

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<sup>8</sup> The term "queries" referred to herein is defined as searches of certain criteria in a relational database to obtain lists of records that match the search criteria and operations to count items and sum amounts.

<sup>9</sup> Lime Group and Lime Wire FLP received funds from sources other than Lime Wire.

Therefore, in my analysis of disbursements, I would estimate that 50% of any disbursements from Lime Group during 2005 would be derived from Lime Wire funds. As a result, \$40,000 of Lime Group's \$80,000 in disbursements in 2005 to Gorton would be calculated as related to Lime Wire. The remaining \$60,000 of the \$100,000 disbursed from Lime Wire to Lime Group in 2005 would be classified as a disbursement to Lime Group. The main point is that, in quantifying disbursements from Lime Wire to Gorton in 2005, it would be inappropriate to simply add the disbursements from Lime Wire to Lime Group of \$100,000 to the disbursements from Lime Group to Gorton of \$80,000 because doing so would double-count the same funds: once when the funds are disbursed from Lime Wire, and then again when the funds are disbursed from Lime Group.

8. Using the methodology described above, I calculated the gross amount of funds disbursed from Lime Wire to Gorton personally of [REDACTED]<sup>10</sup> from August 4, 2003 to present. The gross amount of funds disbursed from Lime Wire to Gorton's related entities, including entities in which Gorton has any ownership interest whatsoever, totaled [REDACTED] from August 4, 2003 to present.<sup>11</sup> This includes total amounts disbursed to these entities without regard to Gorton's percentage ownership in the related entity.<sup>12</sup> Of the gross amounts disbursed to Gorton and his related entities, [REDACTED] of the disbursements constituted

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<sup>10</sup> [REDACTED]

<sup>11</sup> Entities with total disbursements of less than \$1,000 over the entire relevant period were considered de minimis and, therefore, I excluded them from my quantification.

<sup>12</sup> [REDACTED]

distributions of profits in the normal ordinary course (see below for my analysis of investor distributions). As discussed in the paragraph below, the remaining disbursements (totaling [REDACTED]) constituted disbursements for normal expenses incurred by Lime Wire in the ordinary course of business.

9. After performing the foregoing gross calculations, I adjusted my quantification of funds disbursed from Lime Wire to Gorton and his related entities to: (a) account for funds disbursed from Lime Group<sup>13</sup> and Lime Wire FLP to Lime Wire and (b) deduct funds that were normal ordinary course business expenses. These adjustments reduced the gross amount of funds disbursed from Lime Wire to Gorton and his related entities. After these adjustments, the total net amount of funds disbursed from Lime Wire to Gorton and his related entities, including entities in which Gorton has any ownership interest whatsoever, was \$31,697,520. Specifically, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]). After taking into consideration Gorton's ownership interest in Lime Wire FLP and Lime Group, the allocated proportion of total net funds effectively disbursed to Gorton was [REDACTED]. My calculations described in paragraphs 8 and 9 are referenced as *Exhibit B* of this declaration.

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<sup>13</sup> [REDACTED]  
[REDACTED]



### **Analysis of Cash Disbursement Activity Reports**

10. I performed additional data analysis on the cash disbursement activity reports of Lime Wire, Lime Group, and Lime Wire FLP to evaluate whether there was any evidence of possible dissipation of assets. Specifically, I analyzed historical trends in the cash disbursements by developing queries to identify changes in disbursement patterns, unusual payments to vendors or related parties, or irregular disbursement amounts for the relevant period. The cash disbursements analyses included, but were not limited to, summarizing and reviewing disbursements by payee by month and year as well as analyzing the commentary in the “memo” (i.e., description) field in the cash disbursement activity reports. In addition, I compared vendor addresses to Gorton’s address history as established from the investigative due diligence procedures I performed (described above) to identify any additional related entities in which Gorton may have an interest. In performing my analyses, I considered common patterns and characteristics typically found suggesting a possible dissipation of assets (e.g., unusual payments to family members or related entities, abnormal payments of personal expenses, unpaid loans, unnecessary and/or excessive purchases of assets, amounts in even dollars). I selected certain specific disbursements for further investigation and analyzed the supporting documentation.
  
11. Based on my analyses, I conclude that disbursements made from Lime Wire, Lime Group and Lime Wire FLP appear to be related to distributions of profits and normal business expenses incurred in the ordinary course of business. No entities were identified with vendor

addresses that were the same as those related to Gorton, and no unusual payments to Gorton's family members or other entities or individuals were identified. Moreover, it appears that disbursements from Lime Wire, Lime Group, and Lime Wire FLP to Gorton and his related entities significantly decreased from 2007 to present. Thus, I have seen no evidence to indicate the possible dissipation of assets.

12. I also analyzed historical trends of the distributions made to investors of Lime Wire. Specifically, I compared the changes in Lime Wire's consolidated profits to the changes in Lime Wire's distributions of profits over the relevant period. Due to certain lags in the timing of the distributions relative to the respective period's profits, I utilized a two-year moving average to smooth out any short-term fluctuations and identify longer-term trends. To illustrate, the average amount of profits for years 2002 and 2003 were compared to the average amount of distributions to investors for years 2002 and 2003. I then calculated the increase/decrease in Lime Wire's consolidated average profits and distributions for each two-year period and compared the respective percentage increase/decrease to the averages for the prior two-year period.

13. For the periods that included 2006, I adjusted the 2006 consolidated profits to exclude a one-time expense of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. As a result, I adjusted Lime Wire's 2006

consolidated profits as originally reported from [REDACTED].

14. A summary of the comparisons I made reflecting the foregoing 2006 one-time adjustment follows:

Two-Year Period	Average Profits for Two Years	% Change	Average Investor Distributions for Two Years	% Change
2002 & 2003	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2003 & 2004	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2004 & 2005	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2005 & 2006	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2006 & 2007	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2007 & 2008	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

15. Based on my analysis, the distributions made to investors were substantially consistent with the consolidated profits of Lime Wire. As illustrated in the table above, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

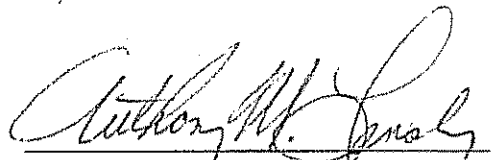
[REDACTED]

16. Based on my analysis of the individual distributions to Lime Wire investors, I did not identify any disproportionate distributions to Gorton or his related entities or individuals during the relevant time period. The amounts distributed to each Lime Wire investor were substantially consistent with each investor's respective ownership interest. Furthermore, no distributions were made to Gorton or his related entities (or to any other investors, including Gorton's relatives) after February 2008.<sup>15</sup> [REDACTED]

[REDACTED]

17. In summary, based on the results of the work performed, I have not identified any changes in disbursement patterns, unusual payments to vendors or related parties, irregular disbursement amounts, or other evidence that would be indicative of the possible dissipation of assets.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29<sup>th</sup> day of June 2010 in New York, New York.

  
Anthony M. Lendez, CPA, CFE, CFF

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<sup>15</sup> The February 2008 distribution, which approximated [REDACTED] was the only distribution made subsequent to November 2007.