

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

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

Defendants.

ECF Case

06 CV 5936 (KMW)(DF)

Dockets.Justia.com

DECLARATION OF RITA D. MITCHELL

I, RITA D. MITCHELL, hereby declare as follows:

1. I am admitted to practice before this Court and am associated with the law firm of Willkie Farr & Gallagher LLP (“Willkie Farr”), counsel of record for Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, “Defendants”) in the above-captioned action. I submit this Declaration in support of Defendants’ Motion for Partial Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

2. Attached hereto as Exhibit 1 is a true and correct copy of the September 8, 2008 Declaration of Katheryn Coggon In Opposition To Defendants' Motions and In Support of Plaintiffs' Motion For Summary Judgment. In this declaration at ¶ 4, Ms. Coggon represented that as of August 28, 2008, Plaintiffs had: (i) pursued copyright enforcement actions against 10,939 users of the LimeWire P2P client; (ii) sued 6,262 LimeWire users; (iii) obtained 726 judgments against LimeWire users (449 of those were stipulated judgments); and (iv) settled another 3,782 claims against LimeWire users.

3. Attached hereto as Exhibit 2 is a true and correct copy of the September 22, 2010 subpoena Defendants served on the Recording Industry Association of America ("RIAA"). Category 8 of the request asked for "All judgments (whether consensual or stipulated or not), settlements, and exhibits attached thereto arising from claims, suits, actions, complaints, or other legal proceedings initiated by You or Plaintiffs against users of the LimeWire software application, including but not limited to all the judgments and settlements referenced in paragraph 4 of the Declaration of Katheryn Coggon, dated September 8, 2008."

4. Attached hereto as Exhibit 3 are true and correct copies of the four production letters from the RIAA that accompanied its production of documents between November 11, 2010 and January 31, 2011 that were "responsive to Category 8." (I believe the reference to "fifth" instead of "fourth" in the final letter is an inadvertent error.) The production letters represented that the documents comprised judgments, settlement agreements, and "complaints and exhibits," the latter in an effort to "assist [Defendants] in determining which specific works were at issue with respect to certain settlement agreements and judgments" obtained against LimeWire users, as many of the judgments do not themselves identify the works at issue in those lawsuits.

5. At my direction and under my supervision, attorneys at Willkie Farr reviewed the judgments, complaints, and exhibits produced by the RIAA to (i) identify the total number of unique LimeWire user defendants whose cases went to final or default judgment (not including settlements) and (ii) compare the sound recordings at issue in those suits to the final revised list of sound recordings included in Plaintiffs' Final Post-1972 List of Sound Recordings attached as Schedule A to the First Amended Complaint.

6. The Willkie Farr attorneys performing that review informed me that there were a total of 678 unique defendants referenced in the materials produced by the RIAA.

7. For review and analysis purposes, a new column was then added to the native Microsoft Excel version of Schedule A to allow Willkie Farr attorneys to identify those sound recordings for which Plaintiffs had already obtained a judgment in one of the LimeWire user suits. The Willkie Farr attorneys then reviewed the judgments to identify the song, album title, and registration number of each sound recording at issue in these suits.

8. Where a judgment did not reflect the sound recordings at issue, the Willkie Farr attorneys reviewed the accompanying complaint and exhibits to obtain a list of those sound recordings. As an example, attached hereto as Exhibit 4 is a true and correct copy of the complaint and the judgment in *Sony BMG Music Entertainment, et al. v. Gray* dated October 15, 2008 (2RIAA0005187-188 and 2RIAA0045762-761). The judgment does not identify the sound recordings at issue in the case. However, the complaint, at paragraph 16 (2RIAA004562), refers to an attached Exhibit A containing the eight sound recordings allegedly downloaded by the defendant using LimeWire (2RIAA0045766). Six of the eight sound recordings appear in exactly the same form on Plaintiffs' Schedule A. The two remaining sound recordings were not

included in our count of the sound recordings for which Plaintiffs have already obtained judgments in suits against Lime Wire users.

9. Attached hereto as Exhibit 5 is a true and correct copy of a list of the 1,355 sound recordings currently listed on Plaintiffs' Final Post-1972 List for which Plaintiffs have already obtained judgments in suits against Lime Wire users.

10. These 1,355 sound recordings are drawn from the 678 judgments produced by the RIAA. According to the Coggon Declaration referenced at Exhibit 1, there are at minimum 48 additional judgments against Lime Wire users (and likely more as the Coggon Declaration was dated August 28, 2008 and Exhibit 4, the judgment against Ms. Gray, is dated October 15, 2008, three months after the Coggon Declaration, placing it outside of Ms. Coggon's count). However, Plaintiffs have represented that the 678 judgments produced by the RIAA comprise the entire universe of "judgments against any person or settlement agreements between Plaintiffs and any person arising from any lawsuit in which Plaintiffs alleged copyright infringement on the LimeWire system," which were required to be produced under Magistrate Judge Freeman's December 29, 2010 Order. Attached hereto as Exhibit 6 are true and correct copies of correspondence with Plaintiffs' counsel, Melinda E. LeMoine, dated January 12, 2011 and February 1, 2011 regarding the production of these judgments pursuant to Judge Freeman's Order.

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

Executed on February 23, 2011.


Rita D. Mitchell
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