

**REDACTED VERSION
COMPLETE VERSION FILED UNDER SEAL**

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; GREG BILDSON; and M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP,

Defendants.

ECF Case

06 CV 5936 (KMW)

**DECLARATION OF DAN C. KOZUSKO IN SUPPORT OF DEFENDANTS' RESPONSE
TO NON-PARTY YAHOO! INC.'S OBJECTIONS TO MAGISTRATE JUDGE
FREEMAN'S JANUARY 31, 2011 ORDER COMPELLING THE PRODUCTION OF
INTERNAL AND EXTERNAL COMMUNICATIONS**

I, Dan C. Kozusko, declare as follows:

1. I am a member of the bar of this court and an attorney with the law firm of Willkie Farr & Gallagher LLP. This law firm represents Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants") in the above-captioned action.

2. I have personal knowledge of the facts set forth below. I submit this Declaration in support of Defendants' Response to the Objections (the "Objections") of non-

party Yahoo! Inc. (“Yahoo”) to Magistrate Judge Freeman’s Order, dated January 31, 2011 (the “Order”), compelling Yahoo to produce certain internal and external communications, including e-mails.

3. Attached hereto as Exhibit A is a true and correct copy of Defendants’ December 10, 2010 letter brief to Magistrate Judge Freeman in support of their application for an Order, pursuant to Federal Rule of Civil Procedure 45(c)(2)(B)(i), overruling Yahoo’s discovery objections and directing Yahoo to produce documents in response to a Southern District of New York subpoena served on Yahoo by Defendants.

4. On September 24, 2010, Defendants served a subpoena on Yahoo, requesting that Yahoo produce certain documents and appear for a deposition (the “Subpoena”). On or about the same date, Defendants also served subpoenas on a number of other non-parties whom they believed to be in possession of information relevant to the issues to be tried before Judge Wood. The Subpoena contains substantially the same requests as the subpoenas to other non-party digital music providers whom Defendants knew or believed to have licensing or distribution agreements with the major record companies. A true and correct copy of the Subpoena is attached hereto as Exhibit B.

5. On September 27, 2010, Plaintiffs’ counsel made a letter application to Magistrate Judge Freeman to quash Defendants’ subpoenas to Yahoo and all other non-parties, as purportedly beyond the scope of discovery permitted by Judge Wood.

6. On October 1, 2010, served objections to the Subpoena (the “Yahoo Objections”). A true and correct copy of Yahoo’s Objections are attached hereto as Exhibit C.

7. On October 15, 2010, the Court denied Plaintiffs’ motion to quash in its entirety. Promptly after the Court issued the October 15 Order, I sent a copy to Yahoo’s

Counsel, Robert Turner of Winston & Strawn, and stated Defendants' willingness to work with Yahoo to make complying with the Subpoena as minimally burdensome as possible. A true and correct copy of my October 17, 2010 e-mail to Mr. Turner is attached hereto as Exhibit D.

8. On October 22, 2010, Mr. Turner and I had a telephonic meet and confer regarding the Subpoena, in which I informed him that the documents Defendants were most interested in receiving from Yahoo consisted of agreements between Yahoo and any Plaintiff, together with related communications and revenue/use information, and proposed that Yahoo produce those categories of documents in the first instance. I emphasized to Mr. Turner that Defendants hoped to resolve their differences with Yahoo to avoid costly motion practice. Mr. Turner said Yahoo would take Defendants' proposal under advisement.

9. On October 28, 2010, Mr. Turner informed me that Yahoo would produce the agreements later that week or the following week and that the revenue information would be forthcoming thereafter as it would take a couple of weeks to gather. Mr. Turner also stated that Yahoo would neither search for nor produce any communications requested by the Subpoena, citing (i) the purported burden of such an undertaking on a non-party, and (ii) Yahoo's alleged inability to gather that information prior to the then-November 15, 2010 deadline to conclude fact discovery.

10. On November 9, 2010, I inquired with Mr. Turner whether Yahoo would be willing to run a mutually-agreed-upon set of search terms on the files of selected custodians in order to locate communications that are potentially responsive to the Subpoena.

11. On November 22, 2010, having received no response from Mr. Turner, I e-mailed him to inform him that Judge Wood had just recently extended the close of fact discovery until the end of January 2011, which I hoped would alleviate any concern on Yahoo's

part that it would lack sufficient time to run those search terms and produce responsive documents that they uncovered. A true and correct copy of my November 22, 2010 e-mail to Mr. Turner is attached hereto as Exhibit E. Mr. Turner responded and stated once again that Yahoo would not agree to search for or produce any communications responsive to the Subpoena, including running search terms on the files of selected Yahoo custodians likely to have relevant documents.

12. On December 1, 2010, I again wrote to Mr. Turner via e-mail, attaching Magistrate Judge Freeman's 11/23/10 Order compelling non-party VEVO to produce responsive documents, and observing that the searches that the Court required VEVO to run in order to locate potentially responsive communications were the same "types of searches that your client will not agree to run here" and informed Mr. Turner that if the two sides "continue[d] to remain at an impasse on this issue, we will not have any other choice but to make a similar application to Judge Freeman." A true and correct copy of my December 1, 2010 email to Mr. Turner is attached hereto as Exhibit F. Mr. Turner did not respond, and as a result, Defendants were forced to move to compel on December 10, 2010.

13. Attached hereto as Exhibit G is a true and correct copy of Yahoo's December 15, 2010 letter brief responding to Defendants' motion to compel.

14. Attached hereto as Exhibit H is Defendants' December 21, 2010 reply letter brief in further support of the motion to compel.

15. Shortly after Magistrate Judge Freeman issued the Order, my colleague, Ian Christy, sent Mr. Turner an e-mail attaching the Order and inquiring as to when Defendants could expect to receive the documents that were the subject of the Order. A true and correct copy of Mr. Christy's February 2, 2011 e-mail is attached hereto as Exhibit I.

16. Mr. Turner responded via e-mail on February 4, 2011, indicating that any discussion regarding compliance with the Order was premature prior to a determination by Yahoo as to whether it would file objections. A true and correct copy of Mr. Turner's February 4, 2011 e-mail is attached hereto as Exhibit J.

17. Yahoo filed its Objections to the Order on February 15, 2011.

18. Although Yahoo did not seek a stay of the Order, it has not produced any documents.

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

February 24, 2011 in New York, NY



Dan C. Kozusko