

**DUANE MORRIS LLP**

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

CAPITOL RECORDS, INC., CAROLINE  
RECORDS, INC., EMI CHRISTIAN MUSIC  
GROUP INC., PRIORITY RECORDS LLC, VIRGIN  
RECORDS AMERICA, INC., BEECHWOOD  
MUSIC CORP., COLGEMS-EMI MUSIC INC., EMI  
APRIL MUSIC INC., EMI BLACKWOOD MUSIC,  
EMI FULL KEEL MUSIC, EMI GOLDEN TORCH  
MUSIC CORP., EMI LONGITUDE MUSIC, EMI  
VIRGIN MUSIC, INC., EMI VIRGIN SONGS, INC.,  
EMI AL GALLICO MUSIC CORP., EMI ALGEE  
MUSIC CORP., EMI FEIST CATALOG, INC., EMI  
GOLD HORIZON CORP., EMI GROVE PARK  
MUSIC, INC., EMI HASTINGS CATALOG, INC.,  
EMI MILLS MUSIC, INC., EMI MILLER  
CATALOG, INC., EMI ROBBINS CATALOG,  
INC., EMI U CATALOG, INC., EMI UNART  
CATALOG, INC., JOBETE MUSIC CO., INC.,  
SCREEN GEMS-EMI MUSIC, INC., STONE  
AGATE MUSIC, and STONE DIAMOND MUSIC,

Plaintiffs,

v.

MP3TUNES, INC., and MICHAEL ROBERTSON,

Defendants.

CIVIL ACTION NO. 07 Civ. 9931(WHP)  
ECF Case

**DECLARATION OF  
EDWARD M. CRAMP  
IN SUPPORT OF MOTION TO  
WITHDRAW AS COUNSEL**

I, Edward M. Cramp, hereby declare:

1. I am a partner at the law firm Duane Morris LLP (Duane Morris”), attorneys for defendants MP3tunes, Inc. (“MP3tunes”) and Michael Robertson (“Robertson”) (collectively, “Defendants”). I respectfully submit this declaration in support of Duane Morris’s motion to be relieved as counsel for the Defendants.

2. On April 27, 2012, defendant MP3tunes filed a bankruptcy petition in the United States Bankruptcy Court for the Southern District of California. Attached hereto as Exhibit A is a copy of the bankruptcy petition filed by MP3tunes.

3. Since the filing of the petition for bankruptcy, the bankruptcy trustee for the MP3tunes estate has not sought to retain Duane Morris to act as counsel for the MP3tunes estate. Nor has such engagement been approved by the bankruptcy court as required by 11 U.S.C. § 327(e).

4. Duane Morris has advised Defendants of its intention to terminate its representation and withdraw as their counsel. Defendant Robertson consented to Duane Morris’s withdrawal as counsel for MP3tunes, but declined to consent to Duane Morris’s withdrawal as counsel for Robertson in his personal capacity. In light of Robertson’s refusal to consent to the motion, Duane Morris has had no choice but to proceed to move to withdraw.

5. During the course of its representation of Defendants, Duane Morris has performed a substantial amount of work in connection with the pleading and discovery phases of this action, and has prepared, and defended against, dispositive cross-motions for Summary Judgment, and Plaintiffs’ motion for reconsideration and application for an interlocutory appeal.

6. Defendants have failed to live up to their contractual obligations to counsel in this action through their failure to timely pay Duane Morris’s invoices. Notwithstanding Defendants’ agreement to pay invoices on a timely basis and repeated requests by Duane Morris for payment,

Defendants have left substantial sums unpaid and outstanding for legal services rendered in the above-captioned action as well as significant costs incurred on Defendants' behalf.

7. As Defendants continued to fail to pay their legal fees, Duane Morris went to substantial efforts and lengths to negotiate with the Defendants for payment of the outstanding amounts, including communications by telephone, in person, and by email.

8. In an attempt to resolve the outstanding legal fees with Defendants and in light of MP3tunes' financial condition, Duane Morris agreed to be paid on a quarterly basis, with each installment being a fixed amount.

9. However, after making just a few payments, Defendants failed to honor this arrangement and failed to make any further payments of the significant fees and costs outstanding.

10. Continued representation of Defendants by Duane Morris creates a conflict of interest because Duane Morris has been identified as a creditor of MP3tunes in a bankruptcy proceeding.

11. Counsel from Duane Morris is also unable to properly represent the interests of Defendants because Duane Morris and Defendants have divergent and irreconcilable views on the appropriate strategy to employ in this litigation. As a result of Defendants' failure to pay for legal services and expenses incurred on their behalf, Duane Morris is unable to pay vendors and expert witnesses in this litigation. Accordingly, Defendants' actions have seriously impaired Duane Morris's ability to represent them. Recent communications with the Defendants have also made it clear that there has been a significant erosion of the attorney-client relationship.

12. An automatic stay is in effect as to any claims against MP3tunes. Furthermore, Defendant Robertson's summary judgment motion is fully briefed and is currently *sub judice* with the Court.

13. For these reasons, both independently and collectively, Duane Morris respectfully requests to be relieved as counsel for the Defendants.


14. Duane Morris would only assert a retaining lien if necessary. In any event, Duane Morris would fully assist new counsel in transitioning the representation by providing critical documents on an expedited basis.

15. Defendants have been provided a copy of this Declaration and accompanying Motion.

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

Executed on: July 12, 2012  
San Diego, CA

By:

  
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Edward M. Cramp

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