

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UMG Recordings, Inc., *et al.*,

Plaintiffs,

vs.

Janne Lanzoni,

Defendant.

Case No. 4:08-cv-3025

DEFENDANT’S MOTION FOR RULE 11 SANCTIONS

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, Defendant Janne Lanzoni moves for sanctions against Plaintiffs. This case is one of a large number of cases in which these Plaintiffs have continued to prosecute copyright infringement claims against the innocent in spite of evidence that the defendants who were sued by these Plaintiffs were innocent. In this case, Defendant Janne Lanzoni presented Plaintiffs with incontrovertible evidence that she was at work on the date and time that the alleged acts of infringement took place, and the Plaintiffs continued to prosecute this lawsuit against her knowing that she was innocent. Sanctions are warranted to compensate Defendant Janne Lanzoni for the costs and expenses of defending against Plaintiffs’ unwarranted continuation of this lawsuit after it became clear that Defendant Lanzoni was innocent. More importantly, sanctions are required to deter these Plaintiffs from continuing such erroneous lawsuits against other innocent defendants in the future.

Defendant has complied with the safe harbor provisions of Rule 11(c)(1)(A), Fed.R.Civ.P. This Rule 11 motion for sanctions was served upon Plaintiffs prior to filing

the motion with this Court, and Plaintiffs failed to withdraw the challenged pleading within 21 days after service of the motion.

I. Background

The litigation abuse that has been practiced by these Plaintiffs upon innocent Americans caught up in their over zealous enforcement of their claims of copyright has been widespread. This case is just the tip of the iceberg. For example, Plaintiffs UMG Recordings, Inc., BMG Music, Sony BMG Music Entertainment and Warner Bros. Records, Inc. were all parties to a case that was wrongfully prosecuted against Debbie Foster and Amanda Foster in the Western District of Oklahoma. An *amicus* brief filed in that case provides a well-written summary of the widespread disregard that these Plaintiffs have had for the rights of innocent people who have been wrongfully accused of copyright infringement:

“[T]he RIAA [Recording Industry Association of America] has wrought havoc on the lives of many innocent Americans who .. have been wrongfully prosecuted for illegal acts they did not commit ... despite their clear innocence and persistent denials. Using questionable methods and suspect evidence, the RIAA has targeted thousands of ordinary people around the country, including grandmothers, grandfathers, single mothers, and teenagers. In its broad dragnet of litigation, the RIAA has knowingly entangled the innocent along with the guilty, dragging them through an expensive and emotionally draining process of trying to clear their names.”

Brief of Amici Curiae American Association of Law Libraries, American Civil Liberties Union, ACLU of Oklahoma Foundation, Electronic Frontier Foundation, and Public Citizen, at 2-3, *Capital Records, Inc., et al. v. Foster*, Case No. CIV-04-1569-W, filed at Doc. No. 132, (W.D. Okla. Aug. 10, 2006) (copy attached as Exhibit 1) (hereafter “Amici Brief”).

According to the Brief of Amici Curiae filed in the *Capital Records v. Foster* case, the Plaintiffs in this case and the Recording Industry Association of America in general had sued over 18,000 individuals for allegedly sharing music through file sharing networks as of August 2006 when that brief was filed. Amici Brief, at 3. In doing so, the Plaintiffs had “carelessly cast a broad net of litigation that ensnares both the guilty and the innocent.” *Id.* at 3. The Plaintiffs have a history of continuing lawsuits against defendants who the Plaintiffs knew or reasonably should have known were innocent, and as a result, “many innocent people accept ... unfair settlement offers because they cannot afford the legal costs to fight back.” *Id.* at 4.

In the case of *Capital Records v. Foster*, the plaintiffs bullied Deborah Foster by falsely representing to her that she was liable as the owner of the Internet account that was allegedly used, regardless of whether she had directly participated in the downloading of the plaintiffs’ copyrighted songs. The court (in an order awarding attorneys fees against the plaintiffs) found that there was no case law holding “the mere owner of an Internet account contributorily or vicariously liable for the infringing activities of third persons.” *Capital Records, Inc. v. Foster*, Case No. Civ. 04-1569-W, Docket No. 161, at 5 (W.D. Okla. Feb. 6, 2007).¹ Four of the five Plaintiffs in this case were also plaintiffs in that case. The same law firm that is serving as counsel to the Plaintiffs in this case (Holme Roberts & Owen in Denver)² also served as counsel for the

¹ A copy of this case is attached as Exhibit 2.

² A copy of a letter received from Holme Roberts & Owen in this case is attached as Exhibit 3. Although this letter might be considered a settlement communication, it is offered for the purpose of showing that law firm’s involvement and control in this

Plaintiffs in that case. The Plaintiffs in this case know that they have no valid theory of contributory or vicarious liability against Defendant Lanzoni, and they are collaterally estopped from contending otherwise.

In the *Capital Records* case, the plaintiffs continued to pursue claims against Deborah Foster after the plaintiffs ceased to believe she was a direct infringer. In that case, the court questioned the plaintiffs' motivations in pursuing claims of contributory copyright infringement against Deborah Foster, finding that "there is an appearance that the plaintiffs initiated the secondary infringement claims to press Ms. Foster into settlement after they had ceased to believe she was a direct or 'primary' infringer." *Capital Records, Inc., et al. v. Foster*, Case No. CIV-04-1569-W, Doc. No. 161 at 5 (W.D. Okla. Feb. 6, 2007).

Plaintiffs UMG Recordings, Inc., BMG Music, Sony BMG Music Entertainment and Warner Bros. Records, Inc., who were plaintiffs in the *Capital Records, Inc. v. Foster* case, are repeating that same wrongful conduct in this case. In the face of incontrovertible evidence that Defendant Janne Lanzoni was at work at the time the alleged acts of infringement occurred, these same Plaintiffs are continuing to pursue claims against Defendant Lanzoni long after they knew, or under an objective standard reasonably should have known, that the claims are no longer tenable.

For the reasons set forth in the Brief of Amici Curiae filed in the case of *Capital Records v. Foster*, the Plaintiffs are aware that using an IP address to identify an alleged

litigation. Rule 408 of the Federal Rules of Evidence "does not require exclusion when the evidence is offered for another purpose."

copyright infringer in the case of peer-to-peer filing sharing is not reliable. Anyone accessing the Internet through a wireless router located in an individual's home would appear to the outside world as having the same IP address. Amici Brief, at 7 ("Families who want to set up a wireless home network so that multiple computers around the house can access the internet can use what is called a wireless 'router' to share that IP address among the computers."). The Plaintiffs in this case knew that "even if a given IP address does not identify a particular account or computer being used, there is no way to know which actual person is using it." Amici Brief, at 8.

In the case of *Atlantic Recording Corp. v. Anderson*, the defendant Tanya Anderson maintained from the beginning that it was a case of mistaken identity, and offered to let the plaintiffs inspect her computer and to depose her and her minor daughter (the only other member of her household and who was only 8 years old when the lawsuit was filed). Findings and Recommendation, at 3 & 9, *Atlantic Recording Corp. v. Anderson*, Case No. 05-933-AC, Doc. No. 191 (O. Ore. May 14, 2008). Plaintiffs UMG Recordings, BMG Music, and Atlantic Recording Corp. were all parties to that case. Those Plaintiffs continued to pursue their claims against Tanya Anderson for two years, and only dropped the lawsuit when she retained legal counsel who filed a motion for summary judgment on her behalf. *Id.* In recommending an award of attorneys' fees, one magistrate judge said, "courts have recognized that a case, while not frivolous when filed, may become so in the course of discovery." Findings and Recommendation, at 8, *Atlantic Recording Corp. v. Anderson*, Case No. 05-933-AC, Doc. No. 151 (O. Ore. Sept. 21, 2007), *findings and recommendation adopted*, 2008 U.S.

Dist. LEXIS 4877, 85 U.S.P.Q.2d 1862 (D. Ore. Jan. 16, 2008). Tanya Anderson subsequently filed a class action lawsuit against Plaintiffs Atlantic Recording Corp., UMG Recordings, and BMG Music (and others) which is still pending. *Anderson v. Atlantic Recording Corp.*, Case No. 3:07-cv-00934-BR (D. Ore. filed June 22, 2007).³

In one case, Sarah Ward, a grandmother in Massachusetts, was accused of using a Windows program to download hardcore rap music, even though her computer was a Macintosh that could not possibly run the program. Amici Brief, at 8. In another case, Marie Lindor was sued even though she did not own a computer at the time of the alleged infringement. *Id.* Gertrude Walton, an 83-year-old deceased grandmother, was accused of sharing files under the user name “smittened kitten” even though she hated computers when she was alive. Yet, even when faced with clear evidence of innocence, the Plaintiffs often delay dropping lawsuits against innocent defendants, as they did in this case. Amici Brief, at 9.

Rule 11 is violated if a party or an attorney continues to assert a contention that is no longer tenable. On that basis, Rule 11 sanctions should be imposed in this case. In addition, the public is harmed when a copyright owner uses “an infringement suit to obtain property protection ... that copyright law clearly does not confer, hoping to force a settlement or even achieve an outright victory over an opponent that may lack the resources or the legal sophistication to resist effectively.” *Assessment Technologies of Wi, LLC v. Wire Data, Inc.*, 361 F.3d 434, 437 (7th Cir. 2004).

³ Plaintiffs failed to disclose that pending lawsuit as related litigation under Local Rule LR5.2. Defendant Lanzoni would be a member of the plaintiff class in that case if it proceeds as a class action.

II. This Is a Case in Which Rule 11 Sanctions Are Appropriate

Rule 11 is intended to protect the integrity of the legal system. *Pope v. Federal Express Corp.*, 138 F.R.D. 684, 691 (W.D. Mo. 1991); *Navarro-Ayala v. Nunez*, 968 F.2d 1421, 1426 (1st Cir. 1992) (“[C]ourts cannot function if lawyers and litigants are not forthright.”). It is part of a lawyer’s overall obligation to the court, and to the judicial system, to help that system function properly to achieve the just resolution of controversies; and which is “meant, in some small degree, to enlist the bar in the enterprise of administering the law, thereby making it more difficult for the strong, or wealthy, to use the very costs of the legal system to undermine its basic objectives.” *Unanue-Casal v. Unanue-Casal*, 898 F.2d 839, 842 (1st Cir. 1990).

The certification specified by Rule 11 is deemed to be made whenever a pleading is “presented” to the court. This includes (1) when it is signed; (2) when it is filed; (3) when it is submitted; and (4) when it is later advocated. Rule 11(b), Fed.R.Civ.P.; *Curley v. Brignoli Curley & Roberts Assoc.*, 128 F.R.D. 613, 616 (S.D.N.Y. 1989) (each time an amended complaint is filed, the amended complaint must meet the requirements of Rule 11 when the pleading is signed), *aff’d*, 915 F.2d 81 (2nd Cir. 1990), *cert. denied*, 499 U.S. 955 (1991).

Even if a pleading passes Rule 11 when it is initially signed, information that subsequently comes to the attention of counsel may demonstrate that a claim or contention is no longer viable. Rule 11 may be violated if an attorney continues to assert a contention that is no longer tenable. *Turner v. Sungard Business Systems, Inc.*, 91 F.3d 1418, 1422 (11th Cir. 1996) (“That the contentions contained in the complaint were not

frivolous at the time it was filed does not prevent the district court from sanctioning [plaintiff] for his continued advocacy of them after it should have been clear that those contentions were no longer tenable.”); *Powell v. Adams*, 138 F.R.D. 128, 131 (E.D. Wis. 1991) (“[T]he sex discrimination claim was pressed even after it became entirely clear that the plaintiff had no reasonable basis for her assertion.”); *Coburn Optical Industries, Inc. v. Cilco, Inc.*, 610 F. Supp. 656, 660 (M.D.N.C. 1985) (“To persist in claims or defenses beyond a point where they can no longer be considered well grounded violates Rule 11.”); *Plante v. Fleet National Bank*, 978 F. Supp. 59, 66 (D.R.I. 1997) (attorney failed to withdraw or modify complaint after actual notice of baseless nature of claims).

In the case of *Jones v. International Riding Helmets, Ltd.*, 145 F.R.D. 120, 124 (N.D. Ga. 1992), *aff’d*, 49 F.3d 692 (11th Cir. 1995), the plaintiff was sanctioned because he was told that the claim against one of the defendants was improper, and despite this knowledge, plaintiff’s counsel made no effort to verify the information.

In *Mike Ousley Productions, Inc. v. WJBF-TV*, 952 F.2d 380 (11th Cir. 1992), one of the defendants filed a “Rule 1.6 Certificate” disclosing his lack of involvement in the underlying controversy. The plaintiff failed to take any action to dismiss him from the case. The plaintiff was sanctioned for continuing to maintain the claim against that defendant.

In the case of *O’Brien v. United States Department of Justice*, 927 F. Supp. 382 (D. Ariz. 1995), *aff’d without opinion*, 76 F.3d 387 (9th Cir. 1996), the plaintiff made duplicative allegations to earlier allegations that had been previously dismissed for lack of subject matter jurisdiction. The court found that the plaintiff had abused the judicial

process by forcing the defendants to litigate jurisdictional issues that the plaintiff should have known by that time were untenable. *O'Brien*, 927 F. Supp. at 386.

In the present case, the Plaintiffs have suggested that they will not dismiss their untenable claims against Defendant Lanzoni unless she provides them with information showing them who the direct infringer may be. Defendant Lanzoni does not have the time, the money, or the resources to attempt to investigate her neighbors and try to identify who might have connected to her wireless network. Nor is she obligated to do the factual investigations required by Rule 11. That rule squarely places the obligation on Plaintiffs to insure that their factual allegations against Defendant Lanzoni have evidentiary support.

III. In Addition, Rule 11 Has Not Robbed This Court of the Inherent Power to Impose Sanctions for Abuse of the Legal System

Under appropriate circumstances, the exercise of a tribunal's inherent power to impose sanctions may be warranted even where Rule 11 procedures are not met. In *Chambers v. NASCO, Inc.*, 501 U.S. 32, 49 (1991), the Supreme Court held that "the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." The sanctioning scheme of the rules, including the safe harbor provisions, does not displace the inherent power to impose sanctions for bad faith conduct. *Id.* at 46.

Rule 11 has not robbed the district courts of their inherent power to impose sanctions for abuse of the judicial system.

Method Electronics, Inc. v. Adam Technologies, Inc., 371 F.3d 923, 927 (7th Cir. 2004).

In *Method Electronics, Inc. v. Adam Technologies, Inc.*, 371 F.3d 923 (7th Cir. 2004), the plaintiff obtained a temporary restraining order based upon a verified complaint that included venue allegations made recklessly or in bad faith. The case proceeded at a rapid pace with an injunction hearing. When the lack of proper venue became apparent during the injunction hearing, and the court issued a sua sponte show cause order concerning sanctions, the plaintiff dismissed the complaint. 371 F.2d at 925. Under the circumstances, the defendants did not have sufficient time to comply with the safe harbor provisions of Rule 11. The court exercised its inherent power to order the plaintiff to pay the defendants a portion of their reasonable attorneys fees. *Id.* at 927. Although Rule 11 does not allow an award of attorneys' fees to the opposing party unless a motion is made in compliance with the safe harbor procedures, the sanctions order in the *Method Electronics* case was affirmed on appeal as a valid exercise of the trial court's inherent power.

In a case where sanctions are authorized by statute or rule, but the statute or rule does not include within its scope a person who is responsible for the sanctionable conduct, a court may rely upon its inherent power in order to sanction the person. *Lockary v. Kayfetz*, 974 F.2d 1166 (9th Cir. 1992).

IV. The Amount of Sanctions

Rule 11 was amended in 1983 to provide that if a Rule 11 violation is found, the imposition of sanctions is mandatory. *Refac International, Ltd. v. Hitachi, Ltd.*, 921 F.2d 1247, 1257 (Fed. Cir. 1990); *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801

F.2d 1531, 1540 (9th Cir. 1986); C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure*, at 223 (Supp. 1989).

In a prior case involving four of the Plaintiffs in this case, (and the same Denver law firm), in an order awarding attorneys fees against those Plaintiffs, the court said:

“[D]efendants who seek to advance a variety of meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious claims of infringement.” Furthermore, when the prevailing party is the defendant, “who by definition receives not a small award but no award,” awarding fees becomes particularly important. “[W]ithout the prospect of such an award, the party might be forced into a nuisance settlement or deterred all together from exercising his rights.” The Court finds that this case presents a situation where considerations of compensation under *Fogerty* weigh in favor of the Court’s award of attorneys’ fees to Ms. Foster. Her only alternative to litigating the plaintiffs’ contributory or vicarious liability claim was to capitulate to a settlement for a violation she insists she did not commit. Such capitulation would not advance the aims of the Copyright Act...

Capital Records, Inc., et al. v. Foster, Case No. CIV-04-1569-W, Doc. No. 161 at 7-8 (W.D. Okla. Feb. 6, 2007).

The cost imposed upon adverse parties as a result of a Rule 11 violation will normally be considered in arriving at the appropriate amount of sanctions. *Temple v. WISAP USA in Texas*, 152 F.R.D. 591, 602 (D. Neb. 1993) (“In arriving at appropriate sanctions, courts will normally consider the cost of the Rule 11 violation ...”). The appropriate sanction when a litigant fails to conduct a pre-filing investigation is often measured by all of the reasonable expenses incurred by each and every defendant who was sued. *Refac International, Ltd. v. Hitachi Ltd.*, 141 F.R.D. 281, 287-88 (C.D. Cal. 1991) (“The ‘appropriate sanction’ which Refac should pay for its violation of Rule 11 is all of the expenses including attorney’s fees, incurred by each and every defendant herein

(including cross- or third-party defendants) from the time of the filing of the complaint through claims for sanctions hereunder including attorney's fees for moving for or joining in the Rule 11 motions...").

The purpose of sanctions is to deter future litigation abuse, punish present litigation abuse, compensate victims of litigation abuse, and streamlining the court docket and management of cases by eliminating cases that should not have been brought, or which should not have been continued, in violation of the rules. *Merrigan v. Affiliated Bankshares of Colorado*, 775 F. Supp. 1408, 1412-13 (D. Colo. 1991), *aff'd*, 956 F.2d 278 (10th Cir.), *cert. denied*, 506 U.S. 823 (1992); *White v. General Motors Corp.*, 908 F.2d 675, 683 (10th Cir. 1990). Sanctions measured by attorney's fees are the normal method of achieving deterrence against lawsuits filed or continued in violation of the rules. *Merrigan v. Affiliated Bankshares of Colorado*, 775 F. Supp. at 1413.

That the Rule 11 violation was costly to the defendant weighs in favor of fully compensatory monetary sanctions because fully compensatory monetary sanctions in cases where the costs are large make plain to the offending lawyer the full consequences of the Rule 11 violation to the aggrieved party.

Temple v. WISAP USA in Texas, 152 F.R.D. 591, 602 (D. Neb. 1993).

Some courts measure the amount of the sanctions by the costs of the violation, *i.e.*, fully compensatory monetary sanctions, in order to achieve deterrence by impressing upon the offending party the full consequences of the violation. *D'Aquino v. Citicorp/Diner's Club, Inc.*, 139 F.R.D. 357, 360 (N.D. Ill. 1991) (sanctions must be fashioned to ensure "that those who create unnecessary costs bear them.").

[T]he award of attorneys' fees is explicitly targeted to deterrence of litigation abuse. By forcing [plaintiff] to internalize the cost to [defendant] of responding, the award of attorneys' fees approximates optimal deterrence.

Merriman v. Security Insurance Co., 100 F.3d 1187, 1194 (5th Cir. 1996).

In addition, some courts reason that legitimate sanctions motions should be encouraged by reimbursing the opposing party for the costs incurred in proving the Rule 11 violation. *Temple v. WISAP USA in Texas*, 152 F.R.D. 591, 606 (D. Neb. 1993) (“[I]t would not serve the purposes of Rule 11 to discourage the filing of legitimate sanctions motions by failing to make aggrieved parties whole, or nearly so, respecting costs reasonably incurred in proving a violation of Rule 11.”).

A district court judge generally has broad discretion in determining the amount of sanctions to be imposed in a case. The judge is usually better acquainted with the litigants and the circumstances in a particular case, and is considered to be in the best position to decide what sanction fits a particular case. *Anderson v. Beatrice Foods Co.*, 900 F.2d 388, 394 (1st Cir.) (“The trial judge is best positioned to decide what sanction best fits a particular case or best responds to a particular episode or pattern of errant conduct.”), *cert. denied*, 498 U.S. 891 (1990).

When the district court settles upon a monetary sanction and fixes a dollar amount, a reviewing tribunal should defer, within broad limits, to the district court's exercise of its informed discretion.

Navarro-Ayala v. Nunez, 968 F.2d 1421, 1426 (1st Cir. 1992). *See also Empire State Pharmaceutical Society, Inc. v. Empire Blue Cross & Blue Shield*, 778 F. Supp. 1253, 1260 (S.D.N.Y. 1991) (“District courts have broad discretion in ascertaining the

appropriate amount of a defendant's attorneys fees though reasonable to serve the purpose of the rule, which is to deter baseless filings in the district courts, thereby streamlining administration and procedure of the federal courts.”).

A district court is accorded broad discretion in setting the amount of sanctions. An appellate court will be reluctant to substitute its judgment for that of the district court judge who is better informed of the totality of the circumstances in a particular case. *Jimenez v. Madison Area Technical College*, 321 F.3d 652, 657 (7th Cir. 2003) (“[I]n all cases, we are to give the trial court ‘*significant discretion* in determining *what* sanctions ... should be imposed for a Rule 11 violation’.”) (emphasis in original), *quoting from Fries v. Helsper*, 146 F.3d 452, 459 (7th Cir. 1998).

In considering the amount of sanctions to be imposed, it is proper to consider the sanctioned party's litigation history. *White v. General Motors Corp.*, 77 F.3d 499, 502 (10th Cir. 1992) (“The offending party's litigation history is one factor which the court may consider in determining an appropriate Rule 11 sanction.”); *Obert v. Republic Western Insurance Co.*, 264 F. Supp.2d 106, 123 (D.R.I. 2003) (“In determining sanctions, a court may consider the wrongdoer's history.”); *Kratage v. Charter Township of Commerce*, 926 F. Supp. 102, 105 (E.D. Mich. 1996) (“In fashioning an appropriate sanction, the court may consider past conduct of the individual responsible for violating Rule 11.”). The Plaintiff's in this case are repeat offenders.

Repeat offenders may require larger sanctions in order to achieve deterrence from future misconduct. Based upon a consideration of a party's litigation history demonstrating willful conduct, courts have found that harsh sanctions may be appropriate

in a given case so as to coerce compliance. *Temple v. WISAP USA in Texas*, 152 F.R.D. 591, 604 (D. Neb. 1993).

Because deterrence is one goal of Rule 11 sanctions, and since the Plaintiffs in this case are repeat offenders, the circumstances suggest that the most severe sanctions available are warranted. As one court noted, when a plaintiff is engaged in a litigation strategy that involves multiple lawsuits, the Plaintiffs may not be deterred by sanctions imposed in isolated cases, because such sanctions will be offset by other lawsuits in which the plaintiffs profit from their violations and are not sanctioned. *Eon-Net, L.P. v. Flagstar Bancorp, Inc.*, 239 F.R.D. 609, 616 (W.D. Wash. 2006) (“It appears, based on the facts before this Court, that Eon-Net has made the failure to investigate or identify infringing technology the hallmark of its litigation plan. Possible repercussions for failure to investigate are balanced against an economy of scale effected by filing numerous lawsuits which will cheaply settle.”), *vacated on other grounds*, No. 2007-1132, 2007 U.S. App. LEXIS 22832 (Fed. Cir. Sept. 27, 2007). *See also* Amici Brief, at 14 (“[T]he RIAA’s mass-produced lawsuits, numbering in the hundreds each month, allow it to take advantage of economies of scale. The marginal costs of each additional lawsuit is minimal for RIAA... . The economics of this situation provide the RIAA with strong incentives to sue as many people as it can, without regard to actual guilt.”).

In the Brief of Amici Curiae filed in the *Capital Records v. Foster* case, the court was urged to consider the broader context of the lawsuit campaign conducted by Plaintiffs UMG Recordings, BMG Music, Sony BMG Music Entertainment and Warner Bros. Records, and “the positive effect that a fee award would have on encouraging

[them] to be ... more prompt in dismissing suits when a defendant asserts substantial claims of innocence or mistaken identity, and more responsible in asserting [their] legal theories.” Amici Brief, at 3. However, even though attorneys’ fees were awarded in the *Capital Records v. Foster* case, that sanction failed to deter these Plaintiffs from continuing to assert similar claims against Defendant Lanzoni in this case after it became clear that the claims against her were no longer tenable. *Capital Records, Inc. v. Foster*, Case No. CIV-04-1569-W, filed at Doc. No. 132, (W.D. Okla. Aug. 10, 2006).

Attorneys’ fees were awarded against Plaintiffs UMG Recordings, BMG Music, and Atlantic Recording Corp. in the case of *Atlantic Recording Corp. v. Anderson*, in part because they continued to pursue their claims against Tanya Anderson after they knew or should have known she was innocent. Opinion and Order, *Atlantic Recording Corp. v. Anderson*, Case No. 05-933-AC, Doc. No. 199 (O. Ore. June 24, 2008)(adopting findings and recommendation of magistrate judge). That sanction failed to deter them from continuing to assert similar claims against Defendant Lanzoni in this case after it became clear that the claims against her were no longer tenable.

Some courts have justified the imposition of significant sanctions by reasoning that imposing *insufficient* sanctions upon litigants who are found guilty of acts committed in bad faith that are an abuse of process “would send the wrong message to litigants and the bar.” *Pope v. Federal Express Corp.*, 138 F.R.D. 684, 691 (W.D. Mo. 1991). It is apparent that these Plaintiffs have not yet received the right message, and continue to prosecute copyright infringement claims against innocent people long after they become aware of evidence showing that the claims are no longer tenable. Past

history indicates that a mere award of attorneys' fees is an insufficient sanction to deter the Plaintiffs from continuing to wrongfully prosecute many innocent Americans who cannot afford the costs of defending themselves.

V. Conclusion

The Plaintiffs in this case have repeatedly abused the legal system by continuing to pursue lawsuits against innocent defendants after the Plaintiffs knew or should have known that their copyright infringement claims were no longer tenable. Even though attorneys' fees have been awarded against the Plaintiffs in the past, the objective of deterrence has not been achieved. It is apparent that stronger sanctions are needed in order to achieve deterrence.

In this case, the Court should award Defendant Lanzoni all of her costs and expenses in defending this lawsuit. In addition, this Court should make a finding that the use of an IP address to identify the defendant in a peer-to-peer copyright infringement case is not sufficiently reliable for the Plaintiffs to rely upon that alone as their Rule 11 basis for suing an individual. The principles of collateral estoppel will apply to these Plaintiffs, and they can be prevented from doing this again in future cases.

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Respectfully submitted,

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