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Ray Beckerman

November 18, 2008

By mail and electronic filing

Hon. Robert M. Levy

Magistrate Judge

U. S. District Court, Eastern District of New York

225 Cadman Plaza East

Brooklyn, NY 11201

Re: UMG Recordings, Inc., et al v. Lindor, 05CV1095(DGT)(RML)

Dear Judge Levy:

We are attorneys for defendant and write to correct certain misleading statements in the letter from Eve G. Burton, Esq. of even date herewith.

1. The initial extension of time in connection with the plaintiffs' motion was to enable the parties *to explore settlement* and was *mutually requested* by the parties. It was not for the purpose of enabling the undersigned to have more time to prepare opposition papers, but was sought with the intention to avoid incurring additional legal fees, rather than drive up the cost of settlement.

2. The second extension of time was requested due to the undersigned's having *waited for weeks* for the plaintiffs to formulate their settlement positions. In fact, plaintiffs ultimately reneged on, and retreated from, their settlement position, after causing the undersigned to wait a number of weeks before commencing work on the opposition papers. For reasons which I cannot disclose here, there is now good reason to think plaintiffs were not negotiating in good faith, just as there is reason to think they have ulterior undisclosed reasons for the requested extension here.

3. Defendant did NOT file her response on November 10th, she filed it on *November 7th*. As of November 24th, plaintiffs will have had *seventeen (17) days* in which to file their *reply papers*, which is an unusually long time for reply papers, which may not introduce new matter.

4. Defendant's motion for sanctions pursuant to Rule 11 was *served on October 22, 2008*. Plaintiffs' response thereto was due on *November 8th*. They are presently ten (10) days in default.

Plaintiffs' statement that their response is due *November 24th* is fiction.

5. Plaintiffs *omit to disclose to the Court* that the undersigned offered to extend plaintiffs' time to file their opposition to the Rule 11 motion to November 24th, which would have been a 16-day extension, giving them a total of *33 days to respond*, on condition that they consent to 10 days for defendant's reply papers; they declined, instead preferring to make the within application to the Court for even more time.

6. Plaintiffs offer no credible reason why they should need more than 33 days for their opposition papers on the Rule 11 motion, or 17 days for *reply papers* in connection with their own motion. Our November 7th opposition papers cited almost no legal authorities except the ones plaintiffs had themselves submitted, and factually dealt only with (a) the exhibits plaintiffs themselves had annexed, and (b) the related contemporaneous materials which *plaintiffs had deliberately concealed*. The Rule 11 motion is based entirely on the same materials. *We strongly suspect, knowing plaintiffs' tactics, that they are requesting the extension because they have someone at work trying to manufacture some evidence which does not exist which they feel will help distract the Court from the misstatements they made in drafting their request for "discovery sanctions", and which they will attempt to introduce as new matter in their reply papers.*

7. It is *not true* that "both parties are seeking dismissal". In response to so much of plaintiffs' motion as seeks dismissal without prejudice, our position is and was that defendant is entitled to her day in court and to full vindication and the opportunity to clear her good name before a jury of her peers. Our Rule 11 motion seeks sanctions but specifies no particular sanction. It would be unusual indeed for the Court to grant dismissal, as a Rule 11 sanction, on the basis of one frivolous motion, albeit one laden with deliberate factual misrepresentations.

8. Plaintiffs' *omit to point out* their sharp practice in refusing to provide a copy of the July 25, 2006, transcript of a discovery hearing before Your Honor, which was in their possession, which I requested while preparing our opposition papers. The transcript would have further rebutted certain of the deliberately false statements made by plaintiffs in their motion papers, which is no doubt why they did not attach it to their moving papers although making false representations about the proceedings in their motion papers.

Respectfully submitted,

/s/

Ray Beckerman
(RB8783)

cc: Eve G. Burton, Esq. and Timothy Reynolds, Esq. (By ecf and email)