

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

-----x

UMG RECORDINGS, INC., et al,

05 CV 1095 (DGT)(RML)

Plaintiff,

-against-

MARIE LINDOR,

Defendant.

**REPLY DECLARATION
IN FURTHER SUPPORT OF
DEFENDANT'S MOTION
PURSUANT TO RULE 11**

-----x

RAY BECKERMAN declares under penalty of perjury:

1. In response to plaintiffs' motion for voluntary dismissal and 'discovery sanctions' (the "Underlying Motion"), the undersigned served upon plaintiffs' counsel, on November 7th, a detailed declaration, made under penalty of perjury, making a number of very specific, documented averments of fact, some relating to the case history which clearly refutes any claim of entitlement to discovery sanctions, and others relating to specific misrepresentations of fact, and other attempts to deceive the Court, committed by the plaintiffs' counsel in the drafting of the Underlying Motion (the "November 7th Declaration").

2. Also on November 7th we served a supplemental declaration in support of the within motion expressly incorporating those averments by reference herein.

3. Although afforded twenty seven (27) days by the Court in which to respond to those averments¹, plaintiffs have submitted no affidavit or declaration denying *any* of the factual

¹ Plaintiffs raise a technical objection to the within motion, that they were not afforded sufficient time to respond to the specific allegations of misconduct, but this objection is mooted by reason of the facts that (a) the undersigned offered to extend their time to respond to the Rule 11 motion to *17 days* after receipt of the November 7th Declaration, and (b) the Court granted

averments, and neither their reply memorandum in connection with the Underlying Motion, nor their opposition memorandum in connection with this motion, refutes a single one of those facts. They simply repeat the same scandalous assertions they made in the Underlying Motion, and address none of the array of details putting the lie to those very assertions.

4. The following facts -- established by the November 7th Declaration and not refuted by plaintiffs -- are undisputed:

Misrepresentations of fact and other attempts to deceive the Court.

(a) Plaintiffs' counsel's representation at page 3 of their moving memorandum that their investigator "[o]n August 7, 2004... detected an individual using the KaZaa file sharing program" was false (November 7th Declaration at p. 7, par. 19, and exhibit A).

(b) Plaintiffs' counsel's representation that, at a July 26, 2005, conference, defendant "claimed she had no Internet Service in August 2004" was false (November 7th Declaration, at p. 7, par. 20, and exhibit B).

(c) Plaintiffs' counsel's intimation that they had relied upon any statement by defendant as to the date of her internet service was false (November 7th Declaration at pp. 7-8, par. 20, and exhibit B; also plaintiffs' exhibit C to Underlying Motion).

(d) Plaintiff's counsel's representation that defendant had claimed that the infringement occurred through a wireless router was false (November 7th declaration at p. 8, par. 21, and exhibit C).

(e) Plaintiff's counsel's representation that they have 'debunked' Mr. Raymond's testimony about a wireless router was false (November 7th Declaration at pp. 8-9, par. 22).

them *27 days* in which to do so.

(f) Plaintiffs' counsel's representation that defendant represented that she had no computer in her home during the time of the alleged infringement was false (November 7th Declaration at pp. 9-10, par. 23 and exhibit D).

(g) Plaintiffs' counsel's representation that there was a delay *attributable to defendant's counsel* in the inspection of the hard drive was false (November 7th Declaration at pp. 10-11, par. 24, exhibits E, F, G, and H, pp. 14-15, par. 28, exhibits M and N).

(h) Plaintiffs' counsel's representation that it was plaintiffs, rather than defendant, who had sought a ruling from the Court on the hard drive inspection was false (November 7th Declaration at p. 11, par. 24, exhibit G, pp. 14-15, par. 28).

(i) Plaintiffs' counsel are in possession of, and have deliberately omitted from their papers and concealed from defendant's counsel, a transcript of the July 26, 2005, conference which contradicts some of the false statements they made in the Underlying Motion (November 7th Declaration at p. 11 n. 5 and exhibit I).

(j) Plaintiffs' counsel's intimation to the Court that Ms. Lindor had denied knowing that Gustave Lindor lived in Brooklyn was false (November 7th Declaration at pp. 11-12, and exhibit K to underlying motion).

(k) Plaintiffs' counsel's representations that they were unable to locate Gustave Lindor was misleading, in that they were able to learn his exact address in August, 2006 (November 7th Declaration at p. 12, par. 25, and plaintiffs' memorandum in Underlying Motion, at p. 6).

(l) Plaintiffs' counsel misleadingly concealed from the Court that the deposition of Woody Raymond to which they were referring was the second, not the first, deposition of Woody

Raymond, that Mr. Raymond had appeared for his first deposition voluntarily and without need for subpoena, that in connection with his subpoena for the second deposition the reason for the delay was that plaintiffs' counsel had given their process server an incorrect address, and that plaintiffs' counsel at all times knew exactly where Mr. Raymond actually lived and worked and had been in touch with his employer. (November 7th Declaration at pp. 12-13, par. 26).

(m) Plaintiffs' counsel's representation that defendant 'concealed' the existence of an external hard drive that had been attached to the computer was false (November 7th Declaration at pp. 15-16, par. 29, and exhibit 0).

Case History negating claim for discovery sanctions.

(n) The action was commenced February 28, 2005; the defendant initially appeared *pro se*. On November 4, 2005, the undersigned appeared in the action to represent defendant. By August 10, 2006, all of defendant's discovery obligations had been fully completed.

(o) In addition to defendant's compliance with her own obligations, when plaintiffs asked to take depositions of Ms. Lindor's daughter Kathleen Raymond and son Woody Raymond, defendant asked them to appear for their depositions voluntarily, which they did, without need for any subpoena, in July, 2006.

(p) The only discovery dispute that has ever existed in this case relating to discovery from defendant was whether, subsequent to her delivery of the hard drive for inspection, and subsequent to receipt of the forensic examiner's report, she would be entitled to at least some limited discovery into the forensic examiner's report. The Court not only resolved that issue in her favor, it gave her more relief than she was seeking, by ruling that she was entitled to

full discovery, including interrogatories and depositions, into the forensic examiner's report and the mirror imaging process.

(q) Subsequent to July 25, 2006, there have been no discovery disputes regarding discovery from defendant at all, and there is not any discovery obligation that has ever existed in this case on the part of defendant, since the day I entered the case, that has not been fully complied with. The only discovery issues have related to (a) plaintiffs' pursuit of discovery from third parties into possible copyright infringements by those third parties and (b) plaintiffs' consistent refusal to comply with discovery notices served by defendant. I.e., all discovery issues related to (a) discovery from plaintiffs, and (b) discovery from third parties initiated by plaintiffs.

(r) Plaintiffs sought and obtained a second deposition of Woody Raymond, and depositions of two nephews of defendant, Gustave Lindor and Jean Lindor, and of another daughter, Yannick Raymond-Wright. Neither the hard drive examination, nor any of the depositions, in any way implicated defendant in any copyright infringement, or even in the use of any computer. (Neither the hard drive examination, nor any of the depositions, implicated *anyone* in any copyright infringement.)

(s) Plaintiffs waited until April, 2008, just before the close of discovery, to take the deposition of Ms. Raymond-Wright. Ms. Raymond-Wright, a military wife and mother of young children who lives in Illinois about an hour from Chicago, asked to have the deposition take place in Brooklyn, New York, where she could have child care. She appeared for her deposition without benefit of counsel, and seemingly on little sleep. Subsequent to the deposition she retained counsel and filed an errata sheet along with her signed transcript. Plaintiffs' counsel ask the Court to (a) accept the transcript and (b) disregard the errata sheet and Ms. Raymond-

Wright's deposition without the errata sheet forms forms virtually the entire 'foundation' for the Underlying Motion.

(t) Throughout the Underlying Motion, plaintiffs' counsel repeatedly attributed to defendant statements made by others, especially for the period prior to defendant's retention of counsel; they offer no legal authority for attributing to defendant any statements made by anybody other than defendant and defendants' counsel.

(u) They likewise attributed to defendant the alleged recalcitrance of some of the third parties to submit to third party discovery. Plaintiffs have failed to explain how these would be legally relevant to a motion for discovery sanctions *against defendant*. The sole 'impediment' *defendant* ever interposed to plaintiffs' stream of third party discovery requests was, on occasion, a totally lawful, appropriate, and justifiable one or two sentence letter in opposition, reminding the Court that the requested discovery did not relate to any possible liability *of defendant*.

(v) Plaintiffs' counsel repeatedly relied on 'statements' that were not made in discovery and are irrelevant to a motion for "discovery sanctions".

(w) Plaintiffs have made no attempt to show (and indeed were they to attempt to do so, the record would overwhelmingly contradict) that they ever at any time relied on anything they were told by anybody other than their own "investigator" and "expert".

(x) Plaintiffs have made no attempt to show how their *ad hominem* attacks against the undersigned for publishing a copyright law blog were relevant to a motion for 'discovery sanctions', yet add another such attack to their reply memorandum.

(y) Plaintiffs concede that they have rested their entire Underlying Motion upon the bizarre technique of taking all open factual issues and disagreements and resolving them in

their favor, and making unwarranted assumptions of fact that (1) the uncorrected deposition of Ms. Raymond-Wright is in all respects true; (2) the corrected deposition of Ms. Raymond-Wright is in all respects false; and (3) anything said by Mr. Raymond with which their counsel disagree is false.

(z) If the computer to which they refer in their motion were to implicate anyone, it would be implicating Ms. Raymond-Wright, not defendant.

(aa) There is no showing anywhere in plaintiffs' Underlying Motion of any concealment of anything, or of any misstatement of anything, *by defendant*.

Parties to the motion.

5. Neither do plaintiffs refute the involvement of Mr. Reynolds, Ms. Burton, Holme Roberts & Owen, Vincent Kao, or Robinson & Cole in the preparation of the Underlying Motion.

Lack of respect for principles of Rule 11.

6. The arrogance and lack of professional responsibility of these counsel, if ever in doubt at the time this motion was made, are certainly beyond doubt at this juncture. Not only have they cavalierly and recklessly made vile and slanderous accusations besmirching the honor and integrity of myself and my client, without factual foundation for doing so, but when confronted with detailed evidence putting the lie to their charges, their reaction was to (a) ignore the evidence, and (b) repeat the same baseless allegations they'd made in the first instance.

7. Never have sanctions been more necessary to protect the dignity, the honor, and the integrity of the judicial process, than they are right now.

Conclusion

8. Based upon the undisputed facts, defendant's motion for sanctions pursuant to Fed. R. Civ. P. 11, should be in all respects granted.

WHEREFORE it is respectfully requested that the defendant's motion be in all respects granted.

Dated: Forest Hills, New York
December , 2008

/s/Ray Beckerman
RAY BECKERMAN (RB8783)