

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

CAPITOL RECORDS INC., a
Delaware corporation; SONY BMG
MUSIC ENTERTAINMENT, a
Delaware general partnership;
ARISTA RECORDS LLC, a Delaware
limited liability company;
INTERSCOPE RECORDS, a
California general partnership;
WARNER BROS. RECORDS INC., a
Delaware corporation;
and UMG RECORDINGS, INC., a
Delaware corporation,

Plaintiffs,

v.

Jammie Thomas,

Defendant.

Case No. 06-cv-1497 (MJD/RLE)

**DECLARATION OF
BRIAN N. TODER IN SUPPORT OF
DEFENDANT'S MOTION FOR
ADDITIONAL TIME TO SERVE
HER EXPERT'S REPORT**

Brian N. Toder declares as follows:

1. I represent Jammie Thomas, Defendant above-named in these proceedings.
2. This Declaration is offered in support of Defendant's Motion for an order extending the time to serve her expert's report identified in this Court's Order of February 12, 2009 (Docket No. 229).

3. In its Order of February 12, 2009 (Docket No. 229), this Court granted Defendant's Motion to extend the discovery schedule permitting her to acquire a trial expert.

4. In the aforementioned Order, the Court allowed Defendant seven days to disclose the expert opinions of Dr. Kim in accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure. Defendant believes that the Court may have ordered that the report be produced in seven days because that is precisely what Defendant asked for in its proposed order to this Court.

5. At the time that Defendant provided the Court with her proposed order, the trial was scheduled to take place March 9, 2009. Accordingly, Defendant wanted to ask for something as reasonable as possible, and being required to provide this report on an expedited basis, made her request all that much more reasonable.

6. Subsequent to providing the Court with the proposed order, and before this Court heard arguments respecting its Order of February 12, 2009, the Court granted Defendant's Motion to continue the trial and ordered a new trial date of May 11, 2009.

7. Accordingly, there was no exigent circumstance requiring a report to be produced within seven days, however, that fact took nothing

away from Defendant's counsel's intention to nevertheless comply with the Order.

8. On Tuesday morning, February 17, 2009, a meeting was held among Defendant's undersigned counsel, Bryan Bleichner, associate counsel, Dr. Yongdae Kim, his assistant and Carol Dawson for the purpose of facilitating timely generation of the report.

9. During the afore-mentioned meeting, your Declarant called Timothy Reynolds, counsel to Plaintiffs, and asked if Plaintiffs would permit Defendant's expert to have two additional weeks to submit his expert report. Timothy Reynolds unequivocally answered in the affirmative provided we agreed that Plaintiffs could take the deposition of Dr. Kim, and Defendant's counsel so agreed.

10. Immediately thereafter, your Declarant called Ms. Miller, Calendar Clerk to Chief Magistrate Judge Erickson, explaining the situation, and Ms. Miller suggested filing a Stipulation and a proposed order.

11. Defendant's counsel drafted a Stipulation and sent it to Plaintiffs' counsel advising that Plaintiffs' counsel could either affix an electronic signature and email it back, or authorize Defendant's counsel to affix both signatures and electronically file it.

12. There were no further communications from Plaintiffs' counsel on Tuesday, and it was not until Wednesday evening that Plaintiffs' counsel advised that he would not sign any Stipulation and that he would require Defendant's counsel to bring a motion.

13. Today is the day after receiving such a revelation from Plaintiffs' counsel, and it is the day that Defendant's expert's report is due.

14. Given the course of events in the last few days and the withdrawn representations of Plaintiffs' counsel, it is obviously impossible for Defendant to timely provide the ordered expert's report and therefore Defendant has moved accordingly.

15. Defendant respectfully requests that the Court modify its Order of February 12, 2009, such that Defendant can serve her expert's report on or before March 5, 2009, a date more than two months before trial.

16. As a practical matter, unless Defendant hears from the Court otherwise, Defendant will be providing Plaintiffs with Dr. Yongdae Kim's expert report as soon as practicable and certainly before March 5, 2009, noting however that since the earliest Defendant's Motion can be heard is March 19, 2009 and so calendared, the Motion will be moot.

I declare under penalty of perjury under the laws of the United States of America, particularly 28 U.S.C. § 1746, that the foregoing is true and correct and that this Declaration was executed on the 19th day of February, 2009 in Minneapolis, Minnesota.

Dated: February 19, 2009

CHESTNUT & CAMBRONNE, P.A.

By /s/ Brian N. Toder

Brian N. Toder #17869X

Bryan L. Bleichner, #0326689

3700 Campbell Mithun Tower

222 South Ninth Street

Minneapolis, MN 55402

(612) 339-7300

Fax (612)336-2940

ATTORNEYS FOR DEFENDANT