

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARISTA RECORDS LLC, a Delaware limited liability company; ATLANTIC RECORDING CORPORATION, a Delaware corporation; BMG MUSIC, a New York general partnership; CAPITOL RECORDS, INC., a Delaware corporation; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; LAFACE RECORDS LLC, a Delaware limited liability company; LOUD RECORDS LLC, a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; MOTOWN RECORD COMPANY, L.P., a California limited partnership; PRIORITY RECORDS LLC, a Delaware limited liability company; SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; UMG RECORDINGS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; and WARNER BROS. RECORDS INC., a Delaware corporation,

Plaintiffs,

v.

DOES 1-27,

Defendants.

**PLAINTIFFS' OPPOSITION TO
MOTION OF DOES 2, 3, 6, 8, 15 & 23
TO STRIKE THE DECLARATION OF
CARLOS LINARES AND
INCORPORATED MEMORANDUM**

CIVIL ACTION FILE

No. 1:07-cv-00162-JAW

**PLAINTIFFS' OPPOSITION TO MOTION OF DOES 2, 3, 6, 8, 15 & 23
TO STRIKE THE DECLARATION OF CARLOS LINARES
AND INCORPORATED MEMORANDUM**

Plaintiffs submit the following Opposition to the Motion of Doe Defendants ("Defendants") to Strike the Declaration of Carlos Linares. ("Defendants' Motion").

INTRODUCTION AND SUMMARY OF ARGUMENTS

The Declaration of Carlos Linares ("Linares Declaration"), was submitted in support of

Plaintiffs' Motion for Leave to Take Immediate Discovery. Defendants argue that the Linares Declaration lacks foundation and is based upon impermissible hearsay. This is simply not true. Mr. Linares is an attorney employed by the Recording Industry Association of America ("RIAA") to work on behalf of the Plaintiff record companies. His duties include supervising copyright infringement investigations, including the work of MediaSentry in this case. Thus, Mr. Linares' testimony is well founded and based on personal knowledge.

Defendants also argue that the Linares Declaration should be excluded because Mr. Linares is not qualified to render expert testimony. Defendants are wrong for at least three reasons. First, Defendant assertion, at best, raises disputed factual issues. A dispute over factual issues, however, does not provide a proper basis for striking the Linares declaration. Second, Mr. Linares is not offering expert opinions. Instead, the Linares Declaration contains factual statements based upon Mr. Linares's supervision of the work of MediaSentry in this case. Finally, Defendants' attacks are premature at this stage of the case. During discovery, Defendants will have ample opportunity to fully vet the merits of Plaintiffs' claims.

ARGUMENTS

2. **Mr. Linares's Declaration is Factually Correct and Based on Personal Knowledge.**

Mr. Linares is an attorney who serves as Vice President, Anti-Piracy Legal Affairs for RIAA. (Linares Decl at ¶ 2) In this capacity, he works entirely on behalf of the Plaintiff record companies, supervising investigations into copyright infringement, including the work of MediaSentry in this case. *Id.* The statements in the Linares Declaration are based upon personal knowledge. *Id.*

Defendants offer various factual challenges to the Linares Declaration. Factual challenges, however, do not provide a legal basis for excluding the Linares Declaration. *Eicken*

v. USAA Federal Savings Bank, 498 F. Supp. 2d 954, 960-61 (S.D. Tx. 2007) (denying motion to strike affidavit that included disputed factual allegations); *Freeman v. Berge*, 2003 U.S. Dist. LEXIS 24692, 2-4 (W.D. Wis. Dec. 3, 2003) (disputes over proposed findings of fact are not grounds to strike an affidavit). Additionally, Defendants' factual arguments are incorrect. Defendants claim that the Linares Declaration should be stricken because he does not have the expertise to make the statements in his declaration. In fact, Mr. Linares offers factual testimony that is based on personal knowledge derived from his supervision of MediaSentry, who investigated the copyright infringement at issue in this case. As such, Mr. Linares is intimately familiar with the infringement investigation procedures and resulting evidence in this case. At best, Defendants' assertions involve factual disputes that are properly addressed in discovery and trial.

Finally, Defendants claim that the Plaintiffs' showing of good cause for expedited discovery was based upon the possibility that the University would destroy the information Plaintiffs seek. In fact, Plaintiffs' good cause showing was primarily based upon Plaintiffs' need to identify the Doe Defendants.

CONCLUSION

For all of the reasons set forth above, Defendants' Motion should be denied and the ongoing expedited discovery in this case should continue.

Respectfully submitted,

**ARISTA RECORDS LLC, ATLANTIC
RECORDING CORPORATION, BMG MUSIC,
CAPITOL RECORDS, INC., ELEKTRA
ENTERTAINMENT GROUP INC.,
INTERSCOPE RECORDS, LAFACE
RECORDS LLC, LOUD RECORDS LLC,
MAVERICK RECORDING COMPANY,
MOTOWN RECORD COMPANY, L.P.,**

**PRIORITY RECORDS LLC, SONY BMG
MUSIC ENTERTAINMENT, UMG
RECORDINGS, INC., VIRGIN RECORDS
AMERICA, INC., WARNER BROS. RECORDS
INC., and ZOMBA RECORDING LLC**

By their attorneys,

**SHEEHAN PHINNEY BASS + GREEN,
PROFESSIONAL ASSOCIATION**

Dated: May 29, 2008

By: /s/ James S. LaMontagne
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2008, a copy of the foregoing was sent via the court's ECF filing system to Robert E. Mittel, Esquire and Paul W. Chaiken.

/s/ James S. LaMontagne
James S. LaMontagne