

- g. Adam Greubel, Defendant;
- h. Nicholas Greubel, Defendant;
- i. E.G., Defendant;
- j. David Greubel, father of Defendants;

3. Statement Regarding Whether Meaningful Progress Toward Settlement Was Made

Plaintiffs made an opening demand that was approximately ten (10) times the amount that similar alleged downloading cases have settled for, based upon defense counsel's past experience with these same Plaintiffs and Plaintiffs' counsel. Defendants responded with an offer that was approximately the same amount as numerous other such cases have settled for after the onset of litigation. Plaintiffs refused to respond with a counter demand, even after Defendants indicated that they would be willing to make a good faith counteroffer to any number heard from Plaintiffs in reply. Plaintiffs' counsel has erroneously suggested that a third party has ultimate settlement authority on behalf of Defendants in this matter, despite being advised by defense counsel that the individual defendants each appeared (as directed by the Court) with full settlement authority. Plaintiff's counsel's contentions to the Court that a third party should have been present, or should be present in the future, to make settlement negotiations meaningful is incorrect; the named Defendants themselves had and have full settlement authority. (See Exhibit 1: Declaration of Charles Lee Mudd, Jr., attached hereto and incorporated by reference as if set forth herein).

On the other hand, representatives of the individual recording company Plaintiffs did not appear at the court-ordered settlement conference. Matthew Oppenheim, an

attorney who has attended previous mediations and settlement conferences in similar cases of alleged downloading and who has introduced himself as a representative of the Recording Industry Association (RIAA), was present instead. If there is any third party exercising control and directing settlement authority, it is this trade association – the RIAA – purporting to act on Plaintiffs’ behalf. The lack of actual individual representatives of each named Plaintiff attending the settlement conference violates the letter and spirit of the Court’s order, and the refusal by those representatives of Plaintiffs to negotiate in good faith prevented meaningful progress toward settlement being made. This was especially disappointing, since two of the defense attorneys had traveled from Chicago at considerable expense.

4. **Statement Regarding Prospects of Settlement Before Trial**

Defendants believe that the prospects for settlement hinge, not on Plaintiffs’ misplaced belief in a phantom insurer, but on Plaintiffs being compelled to attend with representatives of the actual named companies themselves who will negotiate in good faith instead of with a trade association representative.

Respectfully submitted,

s/John G. Browning

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and E.G., a minor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all counsel of record pursuant to the relevant rules of civil procedure on this 23rd day of January, 2008.

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