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DENVER

April 9, 2008

BY ECF AND U.S. MAIL

BOULDER

Hon. Robert M. Levy
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

COLORADO SPRINGS

Re: UMG Recordings, Inc., et al. v. Marie Lindor, No. 05CV1095-DGT-RML
Reply in Further Support of Cross-Motion for Protective Order

LONDON

Dear Magistrate Judge Levy:

LOS ANGELES

Pursuant to this Court's order at the April 3, 2008 hearing, plaintiffs respectfully submit this reply in further support of their cross-motion for protective order (Doc. No. 220) and in opposition to defendant's March 3, 2008 letter (Doc. No. 223).

MUNICH

SALT LAKE CITY

SAN FRANCISCO

In her reply, defendant again refuses to provide any reasoned analysis as to why the documents at issue are reasonably calculated to lead to the discovery of admissible evidence, given that SafeNet's entire Lindor file has been provided to her (in two formats now). Instead, defendant makes conclusory statements and argues that the discovery sought, including requests for highly proprietary information like SafeNet's source code, is necessary to determine whether a misidentification has occurred in this case. Defendant, however, fails to acknowledge that the data collected by SafeNet included a Kazaa username of jrlindor@kazaa and an IP address that Verizon was ultimately able to connect to defendant. Verizon's identification of defendant coupled with the username jrlindor@kazaa are, on their face, sufficient to show that there was no misidentification here. Moreover, defendant does not and could not demonstrate why the additional documents that she seeks are relevant in this case. The fact is that plaintiffs have produced every single document that SafeNet collected in this case relating to this defendant, and defendant has not established any basis for her demand for SafeNet's most highly proprietary information, the disclosure of which would provide road maps for would-be infringers. Accordingly, defendant's motion should be denied, and plaintiffs' cross-motion should be granted.

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Req. Nos. 1(b), 24, 25: SafeNet's entire file relating to this case has already been produced to defendant (now, in two different formats). The documents produced contain the information that is responsive to these requests. Neither SafeNet nor plaintiffs have any other documents that are responsive.

Req. No. 2: Defendant claims that it is fundamental that she is entitled to discovery regarding the compensation of an investigator being called by the opposing party, citing County of Suffolk v. Long Island Lighting Co., 122 F.R.D. 120, 124 (E.D.N.Y. 1988). Defendant ignores the fact that, in that case, the investigator was a designated expert witness, and the issue before the Court was determining the expert's share of the income paid to his company and attributable to his expert witness work in that case. SafeNet is not a designated expert in this case. Moreover, defendant specifically argued that she was entitled to information regarding SafeNet's compensation in the briefing on plaintiffs' prior motion for protective order (Doc. No. 75), and this Court rejected that argument. Although defendant refuses to acknowledge that fact, the record speaks for itself, and defendant should not be permitted a second bite at the apple.

Req. Nos. 3 & 5: Plaintiffs do not know what, if any, documents that SafeNet may have other than the complete Lindor file, which has already been produced (in two formats). That file includes documents that are responsive to Request Nos. 3 & 5. To the extent that defendant is seeking documents beyond the complete Lindor file, for the reasons stated in plaintiffs' cross-motion for protective order, the documents requested are not reasonably calculated to lead to the discovery of admissible evidence and may well be protected by the attorney-client and work-product privileges. Moreover, on their face, these requests are overbroad and unduly burdensome.

Req. No. 23: Plaintiffs take no position with respect to any resumes that SafeNet may have.

Statements of Fact in Plaintiffs' Cross-Motion: Defendant claims that plaintiffs' counsel has falsely stated that the information that defendant is seeking is duplicative, that plaintiffs have already produced system logs, trace routes, digital audio files, and voluminous metadata, and that much of the information that defendant seeks is precisely the same information that she unsuccessfully sought when this Court denied her motion to compel and granted plaintiffs' motion for protective order a year ago. The statements are true, and plaintiffs are willing to provide to the Court the hundreds of pages of documents that plaintiffs have produced in this case. Simply stated, plaintiffs have produced all of the data collected by SafeNet in this case. To the extent that defendant is now seeking these

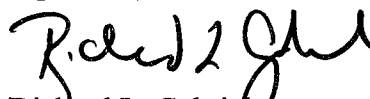
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documents in a different format, allegedly to test authenticity, although there is no basis for any such challenge, plaintiffs have produced the very same documents in .txt format. As for the Court's prior orders, defendant paints those orders too narrowly. As this Court will recall, the briefing on the prior motions was extensive. Defendant raised numerous of the very same issues that she is raising now, and this Court rejected those arguments in finding that the SafeNet agreements were not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendant should not be permitted to try to get through the back door what she could not get through the front door.

"Backup Materials" to the Text Documents Already Produced: Finally, defendant claims that she is entitled to what she calls "backup materials" to the hundreds of pages of text materials that have already been produced. Defendant claims that she needs this information to check for misidentification. As noted above, however, there is no basis for claiming that there was any misidentification here. The data that SafeNet collected showed a Kazaa user with the screen name jrlindor@kazaa, an obvious match to defendant's name. Moreover, Verizon was able to match the IP address obtained by SafeNet to defendant, again dispelling any notion of misidentification. The truth is that the documents that defendant deems "backup materials" are not backup materials at all. One need only look to defendant's request for SafeNet's source code to determine that. There simply is no basis whatsoever for defendant's request for SafeNet's source code, for highly proprietary information regarding search parameters used by SafeNet, the disclosure of which would provide a road map for would-be infringers, or for any of the alleged "backup materials" that defendant is seeking. Nor has defendant attempted to show the relevance of these materials, other than to speculate that such documents could possibly be relevant to misidentification, a non-issue in this case. The burden was on defendant to show the possible relevance of these documents, in the face of obvious concerns as to the proprietary nature of the discovery sought. Defendant has failed to meet that burden, and her motion to compel should be denied.

Respectfully submitted,



s/Richard L. Gabriel
Attorney for Plaintiffs

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