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June 17, 2008

BOULDER

BY ECF AND FIRST-CLASS MAIL

Hon. Robert M. Levy
U.S. District Court, E.D.N.Y.
225 Cadman Plaza East
Brooklyn, New York 11201

COLORADO SPRINGS

Re: *UMG Recordings, Inc. v. Lindor*, No. 05-CV-1095(DBT)(RML)

Dear Magistrate Judge Levy:

DENVER

Plaintiffs respectfully submit this request for a pre-motion conference in advance of filing a motion to dismiss this case without prejudice and for sanctions against Defendant and her counsel for discovery abuse and for unreasonably and vexatiously multiplying this litigation in violation of Fed. R. Civ. P. 37 and 28 U.S.C. § 1927. Plaintiffs also ask that the case be stayed pending resolution of the motion. Plaintiffs' counsel has conferred in good faith with counsel for Defendant regarding this request and states that Defendant opposes the request.

LONDON

LOS ANGELES

From before the inception of this case, Defendant, her family, and her counsel have provided deceptive and/or incomplete information regarding: (1) who was in Defendant's home during the summer of 2004 when Defendant's Internet account was used to infringe Plaintiffs' copyrights; (2) what computers and peripheral devices, such as other hard drives, were connected to Defendant's Internet account at that time and who used them; and (3) the location of such computers and devices. Now, over two years into discovery, Plaintiffs learned for the first time during the recent deposition of Defendant's daughter, Yannick Raymond-Wright, that Ms. Raymond-Wright had spent much of the summer of 2004 at Defendant's home, had brought a computer to Defendant's home, and had connected that computer to Defendant's Internet account at the time of the infringement. This is directly contrary both to the testimony of Defendant and of Woody Raymond, who stated that no one besides Kathleen Raymond stayed with Defendant for an extended period during the summer of 2004, and to the public statements made by Defendant's counsel, who said that, at the time of the infringement, "there was no computer there." See Exhibit A, *Download Suit Defense: 'No PC'*, Red Herring, February 02, 2006, <http://www.redherring.com/Home/15592>. It is also directly contrary to Woody Raymond's testimony that both Kathleen Raymond and Yannick Raymond-Wright were in Virginia in August of 2004. Plaintiffs also learned for the first time that, remarkably, Ms. Raymond-Wright discarded that computer, possibly as recently as March of 2008, more than two years after Plaintiffs began their extensive efforts to find it.

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The loss of such critical evidence, as well as other obstructionist discovery responses, have severely and irreparably prejudiced Plaintiffs' ability to prove their case. Plaintiffs, therefore, have decided to move to dismiss this case. However, because of the severe and irreparable harm they have caused to Plaintiffs' case, Defendant and her counsel should be required to pay Plaintiffs' costs and attorneys' fees incurred as a result of the numerous false and misleading statements in this case, and the deliberate failure to produce, or even identify, the relevant computer hard drive before it was destroyed.

As this Court is aware, this case has a long history of bitter discovery disputes, most of which have been resolved in Plaintiffs' favor, and of efforts by Defendant to impede discovery at every step. Defendant began this case by claiming her total innocence. Plaintiffs repeatedly asked Defendant, her counsel, and virtually every family member to explain how the infringements occurred through Defendant's Internet account by a user using the name "jrlindor@kazaa." Each refused to do so, choosing instead to make Plaintiffs chase and fight for simple information.

Defendant's false statements and misdirection started even before the case was filed. For example, notwithstanding the obvious connection between the "jrlindor" username and Defendant's own name, Defendant and her counsel originally claimed that there was no computer in Defendant's home at the time of infringement and that some unknown third party had hacked into her computer through the use of a wireless router. *See Ex. A.* Plaintiffs, however, have clear evidence that there was no wireless connection at the time of the infringement. Defendant then claimed that she had cancelled her Internet service prior to the time of infringement. *See Doc. No. 142, Tr. of Feb. 6, 2007 hearing.* Plaintiffs tracked this down, and this, too, turned out to be false.

The misdirection and misinformation on Defendant's side continued throughout the litigation. A full recitation would be impossible in this limited space, but a few examples demonstrate the extent to which Defendant's side has tried to keep Plaintiffs from discovering relevant information. With regard to Plaintiffs' attempts to confirm who used the "jrlindor" username, there are numerous examples of Defendant's and her counsel's stonewalling. At their depositions, both Defendant and Woody Raymond testified that they did not know where Gustave Lindor, Jr. ("Junior") lived. Plaintiffs later confirmed, however, that both Defendant and Woody Raymond, in fact, knew that Junior Lindor actually lived in Brooklyn. Junior Lindor's resume, with his current Brooklyn address, was found on the computer in Defendant's home and, once Junior Lindor was finally located and deposed, he testified that both Defendant and Woody Raymond knew that he was living in Brooklyn. It should also be noted that, as did Woody Raymond, Junior Lindor evaded service of his deposition subpoena, forcing Plaintiffs to spend thousands of dollars to serve him.

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Even more significant, early in this case, Defendant produced a computer hard drive that she claimed was the only hard drive connected to the Internet in her home. As soon as they inspected that hard drive, however, Plaintiffs determined that it was not, in fact, the hard drive that was connected to the Internet at the time of infringement. Since that time, Plaintiffs have pursued every option to try to find the correct hard drive, but have been met with resistance at every step. Woody Raymond, a paralegal and IT director who was representing Defendant early on in this litigation, indicated that there was only one computer in the house and that that computer had been produced. When Plaintiffs attempted to serve a subpoena on Woody Raymond for any computers and hard drives that were connected to Defendant's Internet account at the relevant time, Mr. Raymond vigorously evaded service. Once service was effected, Mr. Raymond fought the subpoena and, represented, and continues to represent, that there were no other hard drives connected to the computer, despite irrefutable proof to the contrary. Remarkably, he never disclosed that his sister, Yannick Raymond-Wright, had brought a computer to Defendant's home and connected it to the Internet during the relevant time. That computer has now been discarded, and may have been discarded as recently as March of 2008.

As this Court knows, there is no more relevant evidence than the contents of the hard drive of the computer connected to the Internet via Defendant's account during the time of infringement. Due to the deliberate stonewalling and false information from Defendant's side, however, that computer has now been destroyed and the evidence is gone, and Plaintiffs' ability to prove their case has been severely and irreparably prejudiced. Plaintiffs, therefore, now seek to dismiss this case without prejudice and to file a motion for sanctions against Defendant and her counsel for discovery abuse. Plaintiffs have expended enormous time and effort to try to find the computer at issue while Defendant and her family have concealed evidence and denied responsibility in the face of irrefutable evidence of infringement over Defendant's Internet account. This Court should not countenance this kind of conduct.

Accordingly, Plaintiffs respectfully request leave to file a motion to dismiss without prejudice and for sanctions against Defendant and her counsel, and that the matter be stayed pending resolution of Plaintiffs' motion.

Respectfully submitted,


s/Eve G. Burton

TMR:ah

cc: Ray Beckerman, Esq. (by ECF and e-mail)
Victor B. Kao, Esq. (by ECF and e-mail)