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BY FAX (718) 613-2518 and ECF

Hon. David G. Trager
United States District Judge
United States District Court for
the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Courtesy Copy
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Re: Elektra Entertainment v. Schwartz
EDNY No. 06 Civ. 3533 (DGT) (RML)
V&H File No. 1788-002

Dear Judge Trager:

This is in response to the November 1st letter of plaintiffs in opposition to the request of our client, defendant Rae J. Schwartz, for a pre-motion conference or waiver of pre-motion conference in connection with her motion for summary judgment motion.

Plaintiffs' opposition is based entirely on Rule 56(f), which as your honor knows, does not exist to enable wishful thinkers to embark on fishing expeditions.

Plaintiffs have no evidence of Ms. Schwartz having infringed anyone's copyrights, or of her having done anything that would subject her to secondary liability under *MGM v. Grokster*.

In fact, Ms. Schwartz has never engaged in file sharing, has never heard of file sharing until the RIAA started knocking on her door, and has never downloaded music. Her motion papers will set that forth. She is a middle aged woman with Multiple Sclerosis who uses her computer to communicate with people by email.

Although plaintiffs' counsel feel no ethical compulsion against *alleging* that Ms. Schwartz downloaded and distributed music, they have no *evidence* that she did so, and the summary judgment motion, searching the record as it will, will lay that bare.

The only *evidence* they have is that Ms. Schwartz paid for an internet access account.

In Elektra v. Wilke, a similar case in Chicago, where, as here, the only evidence they had against the defendant was that he had paid for an internet access account, the defendant's summary judgment motion was met with opposition papers which admitted plaintiffs "cannot at this time, without an opportunity for full discovery present by affidavit facts essential to justify their opposition to Defendant's motion" and requested discovery under Rule 56(f). Before the summary judgment motion could be heard, they discontinued the case. (Copies annexed).

The statement in plaintiffs' counsel's penultimate paragraph that Ms. Schwartz knows of someone else's having infringed plaintiffs' copyrights and has 'withheld' such information instead of "engaging in productive dialogue to resolve this matter" is infuriating, as (a) the statement is false, (b) it is irrelevant to the liability of Ms. Schwartz whether anyone else has or has not infringed plaintiffs' copyrights, (c) it suggests that plaintiffs are a law enforcement agency rather than a cartel of four multinational business corporations, and (d) the statement admits – more effectively than anything the undersigned could possibly say – that plaintiffs are, in cases like this, using the federal judicial system for an improper purpose: *for the purpose of conducting an investigation*. They bring suits against individuals, knowing that many or most of them are innocent, and then revel and wallow in the pretrial discovery and subpoena powers the pendency of a federal lawsuit bestows upon them, enabling them to conduct the investigation they ought to have conducted – at their own expense – before suing innocent people.

Fed. R. Civ. P. 11 makes it clear that under our judicial system it is contemplated that the investigation of a defendant's liability is supposed to take place before, not after, the commencement of a federal lawsuit against her.

Respectfully submitted,

/s/Ray Beckerman

Ray Beckerman

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