

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UMG RECORDINGS, INC., et al,

05 CV 1095 (DGT) (RML)

Plaintiffs,

-against-

MARIE LINDOR,

REPLY
AFFIDAVIT

Defendant.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MORLAN TY ROGERS, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and Of Counsel to Vandenberg & Feliu, LLP, attorneys for defendant Marie Lindor.

2. Plaintiffs would have this Court believe that there was an “inordinate” delay of more than a year in defendant’s seeking leave to amend her answer. In fact, it was barely over a month (32 days) from defendant’s filing of her first non-pro se answer in this case (on March 20, 2006) to our request that plaintiffs stipulate to the amendment sought herein (on April 21, 2006). (Exhibit “A” hereto). After plaintiffs refused, defendant wrote to the Court on April 25, 2006 – two business days later – to request a pre-motion conference regarding the instant motion. (Exhibit “B” hereto).

3. Plaintiffs have made no showing of prejudice. At the time the request for a pre-motion conference was made, the parties had barely started discovery. Even now, the only parties who have been deposed so far are defendant and her son.

Plaintiffs, having been on notice of the proposed amendment since April 21st, were free to ask any questions they liked at their July 7th depositions.

4. Plaintiffs argue that the amendment should be denied because they served expert disclosures on April 12th, i.e. nine days before defendant requested the amendment, implying that they would incur additional costs as a result.

5. In serving such disclosures, plaintiffs, however, incurred little, if any, cost beyond copying and postage. Upon information and belief, plaintiffs have retained the same expert and made the same written expert disclosure in other file-sharing cases that they have brought against individuals around the country. Thus, plaintiffs will incur no costs for expert disclosure regarding the new defense that they would not have incurred if the defense had been included in the answer that she filed on March 20th. Neither have plaintiffs made any showing that there are ANY contested facts relevant to the defense that would require any additional witnesses, expert or otherwise.

6. In their opposing papers, plaintiffs deliberately mischaracterize the scope of the relief that defendant initially requested from the Court, in order to suggest that the Court already considers the proposed amendment “not promising”. See Opposing Memorandum, p. 2. Plaintiffs, however, failed to disclose that the motion *then* contemplated by defendant – and as to which the Court’s comments were addressed – was also a motion for *partial summary judgment* limiting plaintiffs’ recovery to a specific amount. The instant motion, however, does *not* seek such relief, and is limited merely to amending defendant’s answer in a general manner so that she may raise the defense of unconstitutionality at a later stage of the case. It is improper for plaintiffs to suggest that the Court’s comments were addressed to the proposed amendment of the answer when

the Court could have simply been commenting on defendant's likelihood of winning partial summary judgment, an issue that the instant motion does not present.

7. Finally, plaintiffs frivolously assert that defendant was under an obligation to notify the Attorney General of the United States regarding the proposed amendment. As set forth in the accompanying Reply Memorandum of Law, defendant was under no obligation to do so. To the extent that she was required to notify the *Court* of the issue of unconstitutionality, if at all, she expressly did so twice through her counsel's letters dated April 25, 2006 and June 22, 2006 (Exhibits "B" and "C", respectively).

WHEREFORE, it is respectfully requested that the Court grant the within motion in all respects.


MORLAN TY ROGERS

Sworn to before me this
24th day of July 2006


Notary Public

JESSICA L. MORAN
Notary Public, State of New York
No. 01MO6139766
Qualified in Rockland County
Commission Expires 1/23/10