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BY FAX (718) 613-2518

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

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Re: UMG Recordings, Inc. et al. v. Lindor  
EDNY No. 05 Civ. 1095 (DGT) (RML)  
V&H File No. 1688-002

Dear Judge Trager:

We are the attorneys for the defendant Marie Lindor. We respectfully request a pre-motion conference in order to make a motion for (a) leave to amend the answer to interpose an affirmative defense of the unconstitutionality of statutory damages of \$750 per song and (b) partial summary judgment limiting plaintiff's recovery to a maximum of \$6.30 per song.

Plaintiffs seek \$750 per song for the 9 songs set forth in exhibit A of their complaint, for a total of \$6750. The total retail cost of licensing the songs would have been 99 cents per song, or a total of \$8.91. The total revenue to plaintiffs from the licensing of the songs would have been 70 cents per song, or \$6.30.

I.e. plaintiffs are seeking statutory damages equal to 1071 times the amount of their actual damages.

It was held by the United States Court of Appeals for the Second Circuit in *Parker v. Time Warner Entertainment Co.*, 331 F.3d 13, 22 (2d Cir. 2003) that copyright statutory damages are subject to the due process test of *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). *Parker* was followed in *In re Napster Inc.*, 2005 WL 1287611, 77 U.S.P.Q. 2d 1833, 2005 Copr. L. Dec. P 29,020 (N.D. Cal. June 1, 2005).

Accordingly, we believe that plaintiffs' recovery is limited to 9 times the actual damages it sustained, or a total of \$56.70.

Accordingly, defendant would like to amend her answer to include a defense of the unconstitutionality of the statutory damages being sought by plaintiffs, and to make a motion for partial summary judgment limiting plaintiff's recovery herein to a maximum of \$56.70.

We believe that the disposition of this motion will help lead to a resolution of this case in short order.

We asked our adversaries whether they would consent to the amendment of the answer to include the affirmative defense, and they declined.

Respectfully submitted,

/s/Ray Beckerman

Ray Beckerman

cc: Maryann E. Penney Esq. (by fax)