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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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CAPITAL RECORDS, INC., ET AL.,) CV. NO. 03-11661-NG

PLAINTIFFS)

VS.) COURTROOM NO. 2

NOOR ALAUJAN, ET AL.,) 1 COURTHOUSE WAY

DEFENDANTS) BOSTON, MA 02210

-----)

LONDON-SIRE RECORDS, INC.,) CV. NO. 04-12434-NG

ET AL.,)

PLAINTIFFS)

VS.)

DOES 1-4,)

DEFENDANTS)

MOTION HEARING

JUNE 17, 2008

2:58 P.M.

BEFORE THE HONORABLE NANCY GERTNER

UNITED STATES DISTRICT COURT JUDGE

VALERIE A. O'HARA

OFFICIAL COURT REPORTER

1 A P P E A R A N C E S:

2 For The Plaintiffs:

3 Arnowitz & Goldberg, by SIMON B. MANN, ESQ.,
4 4 Charlesview Road, Suite 4, Boston, Massachusetts 02441,
 for the Plaintiffs;

5 Robinson & Cole, LLP, by CLAIRE NEWTON, ATTORNEY,
6 One Boston Place, Boston, Massachusetts 02108-4404, for the
 Plaintiffs;

7 Holme, Roberts & Owen LLP, by LAURIE J. RUST, ATTORNEY,
8 and EVE GOLDSTEIN BURTON, ATTORNEY, 1700 Lincoln Street,
 Suite 4100, Denver, Colorado 80203-4541, for the
 Plaintiffs.

9 ALSO PRESENT:

10 Joel Tenenbaum
11 Judie Tenebaum
 Tracy Lawrence
12 Melissa DeSisto
 Alphon Atkinson
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1 either because there was a settlement judgment or
2 because they defaulted and the record companies are
3 seeking to collect on the judgment.

4 So let's start first with the people who have
5 answered and as to whom there are discovery issues, in
6 other words, where the record companies are seeking to
7 get information or trying to get, seeking information,
8 let's put it that way. There is a motion to preserve
9 evidence as to Ryan Hallahan, Mr. Hallahan's, the
10 parties have stipulated to Mr. Hallahan's dismissal, so
11 this motion is moot; does everyone agree?

12 MS. RUST: That is correct, your Honor.

13 THE COURT: Shawn Scott, the defendants have moved
14 to dismiss the case against Shawn Scott without
15 prejudice.

16 MS. RUST: That is correct, your Honor.

17 THE COURT: That would be dismissed.
18 Mr. Tenenbaum, did anyone get in touch with you? I
19 sent numbers of lawyers your way.

20 MR. TENENBAUM: No.

21 THE COURT: So you have filed a motion to amend
22 your answer to raise a whole host of constitutional
23 issues. I will allow you to amend your answer. I
24 still want to find you a lawyer, I'm not giving up.
25 Did you get a call from an individual named Charlie

1 Nesson or someone from the Berkman Center?

2 MR. TENENBAUM: No, your Honor.

3 THE COURT: Talk to my clerk and make sure we have
4 all of your numbers.

5 MS. RUST: Your Honor, if I may, can plaintiffs
6 clarify, please, is Mr. Tenenbaum permitted to amend
7 his answer in order to assert an affirmative defense in
8 counterclaim, and which affirmative defense?

9 THE COURT: I'm allowing him to amend his Answer
10 to include all the grounds that he has listed. I hope
11 to have counsel for him to be able to pare it down, but
12 right now I'd allow him to amend the Answer, and we'll
13 sort it out later.

14 MS. RUST: Thank you, your Honor.

15 THE COURT: At the end of this proceeding,
16 Mr. Tenenbaum, if you could talk to Ms. Molloy and make
17 sure we have all your recent numbers. A motion to
18 dismiss the Shnayders --

19 MS. RUST: Your Honor, pardon, if I may, regarding
20 Tenenbaum before we move on.

21 THE COURT: Yes.

22 MS. RUST: Plaintiffs recently submitted to the
23 Court a letter regarding the status of this case. It's
24 about Mr. Tenenbaum and Mr. Shnyder. In that letter,
25 plaintiffs indicated that this case has essentially

1 been stayed since January 29th, since the previous
2 status conference, and, in fact, your Honor, upon
3 review of the file, it actually appears this case has
4 been stayed since approximately October of 2007. At
5 this point in time, plaintiffs do request permission to
6 proceed with discovery as they have served discovery
7 but have not received any responses from defendant.

8 THE COURT: Outstanding discovery requests have
9 been served?

10 MS. RUST: Correct, your Honor, they were served
11 on defendant on December 5th, 2008.

12 THE COURT: Okay.

13 MS. TENENBAUM: Your Honor, if I may, my son has a
14 letter.

15 MR. TENENBAUM: I have a letter dated
16 April 1st, 2008, writing to the plaintiff as to why I
17 had not responded saying I was waiting to hear about
18 defense counsel provided for by the Court.

19 THE COURT: Yes.

20 MR. TENENBAUM: I wrote this letter, telling
21 them why it was delayed.

22 THE COURT: The delay at this point, really we
23 have been trying to get him counsel, and I think he has
24 a right to rely on my representations that he can get
25 counsel. If your point is going forward, that's a

1 different issue. What I'm going to do then is I'm
2 going to give him -- because we've continued to try to
3 get him counsel, I'm going to give him two months to
4 respond to the discovery which will be then
5 mid-August.

6 THE CLERK: Do you want me to give a date?

7 THE COURT: Yes.

8 THE CLERK: 17th, it would have to be August 18th,
9 it's a Monday.

10 THE COURT: Yes. Mr. Tenenbaum, I'm still going
11 to try to see if we can get counsel for you, but if we
12 cannot, you will be obliged to respond.

13 MR. TENENBAUM: Thank you, your Honor.

14 MS. RUST: Your Honor, while we're on this case,
15 if Mr. Tenenbaum is permitted until August 18th to
16 respond to discovery, we will have past the deadlines
17 set by this Court in the scheduling order that was set
18 at the January 29th status conference.

19 THE COURT: So you submit something that reflects
20 changed deadlines.

21 MS. RUST: Should we confer with defendant
22 regarding that?

23 THE COURT: Yes, you should.

24 MS. RUST: Thank you, your Honor. Your Honor,
25 would it be possible to set August 18th as the deadline

1 in which to submit an Amended Answer as well?

2 THE COURT: Yes.

3 MS. RUST: Thank you, your Honor.

4 MS. TENENBAUM: Is it possible, your Honor, we
5 could reschedule? My son has some information that he
6 would like to share with the Court, and that's
7 information these people want that might be a helpful
8 thing to sort of cut to the chase for a little bit, for
9 example, he got a letter saying that we've been
10 represented by counsel. She never represented him, and
11 I don't know if that will help speed up any of what it
12 is.

13 THE COURT: No, the thing is this: I've said this
14 before in open court. There is a huge imbalance in
15 these cases. The record companies are represented by
16 large lawfirms with substantial resources. The law is
17 also overwhelmingly on their side. They bring cases
18 against individuals, individuals who don't have lawyers
19 and don't have access to lawyers and who don't
20 understand their legal rights.

21 Some category of individuals are defaulted because
22 they read the summons, and they haven't the foggiest
23 idea what it means and don't know where to go, so
24 they're defaulted, and they owe money anywhere from
25 \$3,000 to \$10,000 as a result of these defaults.

1 Sometimes they answer and get counsel, and because the
2 law is so overwhelmingly on the side of the record
3 companies, there's a negotiated settlement which is
4 slightly lower than the settlement the people that are
5 unrepresented have been getting, in other words, with a
6 lawyer you can get some kind of leverage, but it is a
7 delaying game in some sense, and I'm allowing Mr.
8 Tenenbaum's motion to amend his complaint to add
9 additional, amend his answer rather to add additional
10 claims because if someone wants to fight these, they
11 should be able to fight these complaints.

12 As I said, it does not make sense, however, to
13 fight them alone. It simply doesn't make sense to
14 fight them as an individual, per se, and to some degree
15 you run the risk that the longer you litigate without
16 really having a basis to do so, the longer you fight
17 without having a basis to do so, the plaintiff's legal
18 fees go up and up.

19 I can't say this is a situation that is a good
20 situation or a fair situation, it is, however, the
21 situation. So, while your son might have things to say
22 about counsel or not counsel, if you really wish to
23 stand and fight, you need to have legal representation
24 because otherwise all you're going to do is stand in
25 place, their fees go up and we'll end this case with

1 the higher end of the statutory damages rather than the
2 lower end. Really these cases have been resolved
3 anywhere from \$3,000 to \$10,000.

4 MRS. TENENBAUM: My son was offered \$12,000, your
5 Honor, and every time we appear that goes up. We've
6 offered it time and time again since this very
7 inception. They won't --

8 THE COURT: Is that right? Have they been trying
9 to compromise the claim without a lawyer?

10 MS. RUST: Your Honor, I believe that
11 Mrs. Tenenbaum is referring to negotiations that took
12 place before the January 29th status conference in
13 which you said that you would appoint pro bono counsel.
14 When Mr. Tenenbaum filed his motion to amend his motion
15 for summary judgment and his motion to dismiss, at that
16 point in time we did in fact -- and two motions for
17 sanctions, we did in fact discuss settlement. At that
18 point we did have a settlement number and we did
19 explain exactly what you've just said that as our legal
20 fees go up, so will the settlement amount that we
21 offer.

22 THE COURT: I'm going to accept his motion to
23 amend. I'm going to keep the deadlines, but at the
24 conclusion of this, I order a settlement conference to
25 take place right here and now so that this is the end.

1 You know, it seems to me that counsel representing the
2 record companies have an ethical obligation to fully
3 understand that they are fighting people without
4 lawyers, to fully understand that, more than just how
5 do we serve them, but just to understand that the
6 formalities of this are basically bankrupting people,
7 and it's terribly critical that you stop it, so there
8 will be a settlement conference in the Tenenbaum case
9 at the conclusion of this hearing.

10 What is the situation with respect to Shnayder?

11 MS. RUST: Your Honor, it appears that
12 Mr. Shnayder has not appeared today in controvention of
13 your Honor's order. In fact, Mr. Shnayder has never
14 answered the complaint. He was served in February with
15 a copy of the complaint, and since that point in time,
16 plaintiff's counsel has made several attempts to reach
17 out to Mr. Shnayder, both by telephone and in writing.
18 I believe I included a copy of the most recent letter
19 to Mr. Shnayder in May reminding him of his obligation
20 to answer the complaint and letting him know that if he
21 did not answer the complaint that plaintiffs reserved
22 their right to seek a default judgment against him.

23 In addition, your Honor, my colleague, Eve Burton,
24 did have an extensive conversation with Mr. Shnayder at
25 the conclusion of the January 29th status conference to

1 make sure that he understood that he had admitted
2 liability for the infringement of the copyright and
3 that we wished to -- that we wished to settle this
4 claim rather than proceed with a motion for summary
5 judgment. He promised he would get back to us
6 regarding settlement. Contrary to that, your Honor, he
7 has refused to return phone calls, he has refused to
8 engage in any conversation.

9 THE COURT: Are you sure you have his address?

10 MS. RUST: I am sure, your Honor. I have
11 contacted him, I have spoken to him briefly on the
12 phone, but he simply refuses to engage in this
13 conversation.

14 THE COURT: And so what are you proposing, I
15 default him and whatever you want to charge should be
16 charged to him? What are you proposing?

17 MS. RUST: My proposal, your Honor, is that we
18 give him leave to default Mr. Shnyder in addition to
19 failing to answer the complaint, in addition to failing
20 to appear at this conference after having received your
21 Honor's order and in addition to flatly refusing to
22 engage in any form of settlement negotiations,
23 plaintiffs believe that the only course of action left
24 is to default him.

25 THE COURT: File a motion to default and I will

1 look at it. Serve it on him. Give me proof that it
2 has been served on him.

3 MS. RUST: Your Honor, do you prefer personal
4 service?

5 THE COURT: Personal service.

6 MS. RUST: Thank you, your Honor.

7 THE COURT: The difficulty, of course, now is that
8 we are five years into this case and so there are
9 people who have already paid numbers that I've
10 described, so to some degree by giving a break,
11 assuming I could, to the defendants going forward it is
12 unfair to the people who have in fact paid these
13 amounts of money. In other words, what I've done in
14 this case, the best that I can do given the state of
15 the law and the unequal resources is to try to level
16 the playing field as best I can, to try to find
17 lawyers, the lawyers look at a case in which the law is
18 so overwhelmingly on the side of the record companies
19 and say why should we get involved?

20 So the group of lawyers that we're trying to get
21 to represent you all is not a very large group, which
22 is why we've had difficulty assigning lawyers to you.
23 So, you're left to deal with very substantial
24 defendants on your own, and as I said, the most I can
25 do is make sure that you know what's going on, that you

1 know what you're facing, that if we can get you
2 lawyers, we'll get you lawyers, and I'll entertain
3 motions that you have.

4 So that's with respect to Shnayder, you're going
5 to file a motion to default; with respect to Hallahan,
6 Hallahan is dismissed?

7 MS. RUST: That's correct, your Honor.

8 THE COURT: Then there are those people who have
9 never been represented or appeared in the case in any
10 way even though they were served, is that right?
11 That's the next category.

12 MS. RUST: Correct, your Honor.

13 THE COURT: You have asked for -- you have filed
14 motions for default in each of these cases?

15 MS. RUST: That's correct, your Honor.

16 THE COURT: Now, the damages in these cases, are
17 any of these individuals present, Tracy Lawrence,
18 you're here?

19 MS. LAWRENCE: I'm here, your Honor.

20 THE COURT: Why don't you stand. The record
21 companies have moved to default you and request damages
22 in the amount of almost \$6,000. Do you understand
23 that?

24 MS. LAWRENCE: I do, your Honor.

25 THE COURT: You could pay the money and settle the

1 case, you can negotiate with them to see if there's
2 some way around it, you can try to get a lawyer to try
3 to set aside the default. Do you know what you want to
4 do?

5 MS. LAWRENCE: Your Honor, this case has been
6 going for about four or five years, as you stated.
7 Originally -- obviously I can't afford an attorney, and
8 I've tried to find attorneys, and there's a shortage or
9 none available. Originally I had tried to settle
10 several times because, once again, we had a computer in
11 the main area of our home which had several uses, so
12 rather -- not that I was admitting guilt, but rather
13 than continuing this, and the fees were getting pretty
14 large, I have tried to settle.

15 When I told them my financial status, they had
16 sent a constable to look at some papers to my home,
17 which is the home of my boyfriend, and it just happens
18 to be a larger home. I did have an attorney at one
19 point, and he had called me. He said, well, they've
20 seen your house. It's not my home, my name is not on
21 it. They were faxed information that shows I have
22 nothing to do with this home, it's my boyfriend's home
23 probably owned for five or six years, we've been there
24 for two years.

25 I filed a hardship with the attorney that was sent

1 to them, and then there was some paperwork that had
2 gone back and forth, and the attorney had an incorrect
3 date. It was probably dated for August and backdated
4 or whatnot, so last I had heard there was nothing. My
5 attorneys sent them a hardship. I never heard another
6 word, had no idea what the status was, assumed that
7 maybe because of my hardship and being a single parent
8 that they just decided I wasn't worth pursuing, and
9 then once again I get another paper saying they would
10 like to reopen it. I have called on numerous occasions
11 before. I never heard about by hardship, I didn't
12 continue to contact them, however, I did leave the
13 attorneys several messages.

14 THE COURT: You understand, here's the problem. I
15 keep on explaining the very same thing. They file a
16 complaint, you have to answer. If when the complaint
17 is served on you, you don't answer, they come in and
18 they default you, which means they're entitled to the
19 relief they requested because you haven't fought,
20 right. They're not obliged to settle with you, but
21 they certainly should. The longer you wait without a
22 lawyer, without fighting, the more the damages mount.

23 MS. LAWRENCE: I did, they had contact with my
24 attorney.

25 THE COURT: You had an attorney?

1 MR. LAWRENCE: I did. I never met with him
2 because he did a little bit of work for me which I'm
3 sure you have the paperwork. I no longer have the
4 paperwork. I'm no longer in the home. He did my
5 hardship papers. At that point I wasn't working, at
6 this point, I am, but all that information was
7 provided.

8 THE COURT: Is that right, Ms. Rust?

9 MS. RUST: Yes, your Honor. Your Honor, we were
10 in contact with an attorney named Richard Comenzo. He
11 represented that Ms. Lawrence was a single mother and
12 did have financial difficulties. When we did a quick
13 public records search, we did see that she lives in a
14 home that was over \$300,000 and was associated with a
15 home that was valued at \$675,000. Now, wanting to
16 believe the attorney, we said we would certainly extend
17 the opportunity to tell us what your financial
18 situation is so that the record companies could make an
19 appropriate settlement amount, and we did explain, your
20 Honor, that we would need some information as to who
21 lived in this house worth \$675,000 because our
22 understanding was it was the defendant.

23 Your Honor, as your Honor understands, plaintiff's
24 hardship settlement process is certainly for those more
25 indigent defendants, and based on the information we

1 gleamed from public records, this defendant did not
2 appear to qualify. Nonetheless, we sent paperwork and
3 said please explain, tell us who this is, if you don't
4 live there, please tell us. The attorney, in fact, Mr.
5 Comenzo never returned paperwork to us. I personally
6 left several voice mail messages for him in an attempt
7 to get this information. He never returned it.
8 Ms. Lawrence did actually leave me several voice mail
9 messages, and each time I returned her call and said I
10 need your attorney to tell me that he no longer
11 represents you in order to satisfy my ethical
12 obligations. We never heard back from the attorney and
13 never heard back from Ms. Lawrence that the attorney
14 didn't represent her.

15 MS. LAWRENCE: Your Honor, my boyfriend has owned
16 that home for six years. I have no interest in that
17 home. They're valuing at whatever, there's no
18 driveway, there's no yard. My thing, it's not my home.
19 I don't pay for it, so I feel like that's reflecting on
20 my income. It's not my home.

21 THE COURT: But, again, this is all part of the
22 informal part of it, which is that they can accept your
23 representations or they cannot. If they don't, then
24 they say you haven't answered in the formal part of the
25 lawsuit, and they're entitled to go for statutory

1 damages, so, again, with respect to Ms. Lawrence, after
2 you finish a settlement conference with Mr. Tenenbaum,
3 they'll be a settlement conference with Ms. Lawrence.

4 Ms. Desisto.

5 MS. DESISTO: Yes.

6 THE COURT: You are someone who also has never
7 answered, and, again, they're seeking 6250 in damages,
8 \$6,000 in damages and 250 in costs. Has there been any
9 settlement discussions in your case?

10 MS. DESISTO: No, this is the first I've heard of
11 this case. I was never served with any papers as it
12 says I was on January 9th of 2006.

13 THE COURT: It was served in your hand to your
14 mother, so you don't know anything about this. Are you
15 living at home?

16 MS. DESISTO: Yes. No, currently I don't live at
17 home. At that time I would have been in school, which
18 is when the incident occurred. My IP address at school
19 was shut off for a brief period of time. I spoke with
20 some legal, I'm not sure if they were legal, IT
21 department at my school on why they had put down my IT
22 address. They had notified me that there was a
23 possibility of copyright infringement, that it was
24 nothing confirmed. My computer actually wasn't in my
25 possession when everything went through, it was in the

1 possession of the IT department being fixed.

2 THE COURT: What do you mean at the time? You
3 believed at the time of this downloading it was in the
4 possession of the IT department?

5 MS. DESISTO: The date that they gave me as far as
6 when the sharing occurred was not in my possession, no.
7 My computer was never fully in my possession for the
8 entire month that they said the eight songs were
9 shared.

10 THE COURT: Okay. So Ms. Desisto at the
11 conclusion of this hearing, they'll have a conference
12 with you as well, and if you could prove that, you'd be
13 out of the case. Okay. Mr. Atkinson. Hi.

14 MR. ATKINSON: Good morning, good afternoon. I
15 didn't personally download any of those songs myself.
16 My son had brought the computer to school only, and
17 suddenly I understand that those songs were downloaded.
18 I didn't do it personally, so I don't know if he
19 downloaded the computer.

20 THE COURT: Where is your son now?

21 MR. ATKINSON: My son is 21 years old now, and he
22 is working.

23 THE COURT: Well, with you there was a default
24 judgment, there was an amount that was entered, and now
25 the record companies are going after the assets. The

1 judgment was in the amount of how much?

2 MR. MANN: \$4,650, your Honor.

3 THE COURT: \$4,650, so your son has to pay the
4 \$4,600 unless he can show that he doesn't have any
5 money.

6 MR. ATKINSON: Okay. I'm retired now, I'm not
7 working.

8 THE COURT: They're not asking you for this, this
9 is your son needs to pay \$4,600 to the record
10 companies, who are in desperate need of this money,
11 unless your son can show that he has no way of paying
12 it. He has to respond. He has to be able to respond
13 to this and indicate what his assets are and what his
14 liabilities are, do you understand? If he doesn't have
15 any money, he has to tell that to them.

16 MR. ATKINSON: Pardon me.

17 THE COURT: If your son doesn't have any money --

18 MR. ATKINSON: Well, he just left school, he
19 doesn't have any money.

20 THE COURT: He's in school now?

21 MR. ATKINSON: He just left school, he just
22 graduated from school. He doesn't have any money now.
23 He asked me to negotiate, you know, to pay some kind of
24 funds.

25 THE COURT: Does he owe money from his school?

1 MR. ATKINSON: He doesn't have any money right
2 now, he just left school.

3 THE COURT: No, no, does he owe money from his
4 tuition? Oh, high school, he's in high school?

5 MR. ATKINSON: No, he just graduated from the
6 computer school so he doesn't have any money right now,
7 so he can negotiate with the recording people to see
8 how much he can pay.

9 THE COURT: Counsel, you will talk to Mr. Atkinson
10 afterwards to negotiate.

11 MR. MANN: Your Honor, I did speak with
12 Mr. Atkinson earlier, and I did mention that I'd be
13 more than interested in discussing settlement with him,
14 and he's already expressed that he has no inclination
15 to do so, and, further --

16 THE COURT: No inclination to talk to you, no
17 inclination to pay?

18 MR. MANN: To settle or pay. He actually
19 expressed that he may want to retain counsel; however,
20 he also said he can't afford to do so.

21 THE COURT: This is the younger Mr. Atkinson or
22 this Mr. Atkinson?

23 MR. MANN: That's what I wanted to do next. It's
24 my understanding that this is the gentleman that the
25 default judgment is against and not his son, although I

1 could be wrong, my understanding that this is the
2 gentleman that the default judgment was against.

3 MR. ATKINSON: I'm the senior, not the younger.
4 I'm not the one who downloaded, it was my son who
5 downloaded, not me. I am Alphon Atkinson. My son,
6 Brian Atkinson, he's the one who downloaded. He's the
7 kid who downloaded the songs from the internet. They
8 come after me because my name is on the computer, but I
9 bought the computer. At the time he downloaded, he was
10 a child, okay, and I'm the father. He didn't have a
11 job at the time, so I bought him a computer to use for
12 school purposes only. They came after me because I
13 bought a computer. My name is on the computer, you see
14 what I'm saying, I didn't download it.

15 THE COURT: What happens, as I said, there are
16 three levels of cases here, the first level of cases is
17 where someone has answered and defended the case, and
18 we've dealt with those cases, those are the people that
19 have some -- where there's a discovery battle or
20 something like that, and that's Mr. Tenenbaum, as I
21 said, your dates are August 18th to either respond or
22 we'll try to get you a lawyer. Then there are the
23 default judgment people, that's Tracy Lawrence and
24 Ms. Desisto, and you guys are going to talk to them to
25 see if the case can be settled, and with the Tenebaums

1 as well so that the money doesn't get higher and
2 higher.

3 Then with respect to Mr. Atkinson, if what he says
4 is true that he didn't do the downloading, that it was
5 his son who did the downloading and his son has no
6 assets, you're getting water from a stone. What are
7 you pursuing here?

8 MR. MANN: I don't know what the merits of the
9 case were when the earlier court rendered a judgment
10 against Mr. Atkinson.

11 THE COURT: There were no merits of the case, it
12 was a default judgment, all that happened, you sued,
13 there was silence on the other side, and then you come
14 up with a judgment of \$4,000 because that's the
15 statutory damages, and Congress says you can get it.
16 These people never defended, if now they brought
17 forward a defense --

18 MR. ATKINSON: Why are they suing me? I didn't
19 download anything.

20 MRS. TENENBAUM: That's true of all these people,
21 he's been complaining forever that he has no assets and
22 that he will file for bankruptcy, and all these people
23 have said that's tough.

24 MR. MANN: Your Honor, if I may, this is why we
25 have supplementary process, this is why we bring

1 debtors into court so we can examine in fact what their
2 ability to pay is.

3 THE COURT: But you understand this is a terribly
4 vicious cycle. On the one hand, you say we bring them
5 into court so we can examine them. They come into
6 court without a lawyer. They haven't a clue what these
7 proceedings are. We have been trying to explain it to
8 people, and then because they don't respond, the
9 numbers keep on going up and up, and at a certain point
10 after 133 cases in my court and countless around the
11 country, the plaintiffs are going to realize this is
12 making no sense and making them look bad.

13 Mr. Atkinson, you did not respond to the case,
14 they sued you, you didn't respond. When you don't
15 respond, the defenses that you're raising now don't get
16 onto the court record. They may be legitimate
17 defenses, but you never mentioned them before, then
18 they wind up with a judgment for \$4,000.

19 MR. ATKINSON: Let me explain to you the reason
20 why I didn't respond and the reason why I take so long
21 to respond. This is my second time coming to this
22 court, okay. When I came in the first time, there was
23 so many people here in tears and confusion and
24 everything else, I didn't get to talk to the Judge,
25 okay.

1 THE COURT: Okay.

2 MR. ATKINSON: I came here, and the plaintiffs
3 were crying and everybody was so confused. When I
4 walked in here, nothing else went on, I was confused
5 myself. I walked in here and walked out of here
6 without knowing what's going on, so I came without
7 knowing what's going on, okay.

8 THE COURT: I'm going to take it as an oral motion
9 to set aside the default, the oral motion to set aside
10 the default which I may grant after you talk to the
11 record company representatives to see if they can
12 settle the case. If it is the case that it was your
13 son and your son has no money because he just graduated
14 college, then the case will be over or should be over
15 in the rational world, okay, so I'm going to take this
16 as an oral motion to set aside the default and after
17 today you respond.

18 MS. BURTON: Your Honor, if I may, this is
19 Eve Burton for the plaintiffs. I just feel the need, I
20 understand your Honor's concern, I absolutely do, and I
21 understand your Honor is not comfortable with this
22 litigation. The plaintiffs are in a very difficult
23 position, and I think it is important for the Court to
24 at least hear the plaintiffs' side of these cases that
25 there's massive piracy going on on the internet. It is

1 occurring largely by younger people, although
2 throughout the community, thousands of jobs have been
3 lost.

4 There is real economic loss associated with this
5 ranting piracy, and there's also a lack of respect for
6 the copyright laws. People feel like they can, because
7 it is anonymous on the internet, feel like they can
8 anonymously infringe massive amounts of plaintiffs'
9 copyright of sound recordings along with movies and
10 other forms of media, and plaintiffs, as this Court,
11 I'm sure is aware have pursued multiple avenues in
12 trying to stem the tide of piracy.

13 Not only have they pursued the peer-to-peer
14 networks, as I know your Honor is aware of, they have
15 been engaged in massive educational campaigns through
16 public media as well as through the university system,
17 and they have really made, in my opinion, a valiant
18 attempt on multiple levels to try to stem this tide,
19 and yet, although there has been some progress, the
20 massive infringement continues, and plaintiffs feel
21 that they are left with no choice but to proceed
22 against individuals because, frankly, that is part of a
23 multi-faceted approach to trying to stem the tide of
24 piracy, and plaintiffs go to great lengths to try to
25 communicate with defendants to give them lots of

1 opportunities to settle.

2 They make reasonable, in the plaintiffs' position,
3 although I understand this Court may not always agree,
4 they make reasonable settlement demands that increase
5 over time as the plaintiffs are forced to expend time
6 and money on this. They reach out at multiple levels,
7 both before, both allowing defendants and even before
8 they're named when they're just a number, if you will,
9 or a John Doe, to settle anonymously so they don't have
10 judgments, they don't have court cases filed against
11 them. They reach out to them and ask if they have any
12 defense, did anyone else do this, do you have a story
13 to tell us, do you have exceptional circumstances?

14 THE COURT: I appreciate that. It is this
15 rationale that led to this law that is so much, so
16 protected of the record companies. The question though
17 first is this the way to stop it, the reasonable way to
18 stop it, and then I have individuals in front of me. I
19 have individuals in front of me who haven't the
20 foggiest idea what they're facing, and every effort to
21 try to deal with it, we face the same kind of thing
22 come before this Court alone and without counsel.

23 We had a parent once, you remember the case, who
24 wrote to us and said I don't know what you're talking
25 about, my son did this, I'm going to have to kill him

1 because I don't have the money. I mean, there have
2 been these stories, so this is just not the way to do
3 it.

4 But that's my, you know, this is not accomplishing
5 the task. I will certainly as long as these cases are
6 in front of me, as I said, the best I can do is make
7 sure people understand their rights and try to equalize
8 the level playing field because in the final analysis
9 no defense has worked except I wasn't the one -- two
10 defenses have worked, it wasn't my computer and I
11 didn't do it or I don't have a dime. Nothing else
12 worked, having been litigated around the country,
13 nothing else had worked. I am perfectly open to
14 creative defenses, but I can only warn you that nothing
15 has succeeded, so at this point, Mr. Atkinson, I want
16 you to talk to counsel because if there was a wrong
17 done in your case, let's see if we can address it.

18 I take your point, it's not an individual issue,
19 it's not a question of the record companies are
20 concerned with individuals who have done something
21 wrong, they are concerned with that, but it is part of
22 a larger picture, and I understand the larger picture.
23 The problem is I have to deal with human beings in
24 front of me, and these are human beings who are facing
25 overwhelming odds, and there is something wrong with

1 that picture.

2 MS. BURTON: As to Mr. Atkinson, your Honor,
3 default judgment was entered in this case in 2005, and
4 I understand his pro se status, and we are more than
5 happy, in fact, would like to talk to both him and his
6 son to work to resolve this, however plaintiffs would
7 object to any motion and any order setting aside the
8 default.

9 THE COURT: It's just a motion. I want the issue
10 to be teed up. Whether it works will depend on the
11 outcome of today's discussion.

12 MS. BURTON: Hopefully, your Honor. Hopefully it
13 would be unnecessary. Hopefully we'd like to resolve
14 it. If the motion ends up being made, we obviously
15 would like an opportunity to brief it given the fact
16 it's been well over one year, in fact, three years
17 since default judgment was entered.

18 THE COURT: Ms. Lawrence, you had your hand up.

19 MS. LAWRENCE: Yes, your Honor. During the early
20 stages of this lawsuit, I had mentioned that my
21 daughter -- actually, my computer is in the main area,
22 and her and her friends would be on it listening to
23 music, whether it was on CD or whatnot, and I happened
24 to mention that my daughter did download this music,
25 and what their thinking, it was my IP address, it was

1 my home and I was responsible for it.

2 THE COURT: How old is your daughter?

3 MS. LAWRENCE: She is 19 away at college. She was
4 14 or 15 when it started.

5 THE COURT: All right, let's see if we can have
6 discussions. Those of you who have taken the time to
7 come here, had an opportunity to talk meaningful,
8 either settlement or deal with the deadlines and
9 litigate the case. I don't want to force people into
10 settlements, but you have three choices in this case,
11 you either fight, and there are risks to that, or you
12 settle, but what you oughten do is ignore it because if
13 you ignore it, the numbers just keep on mounting up and
14 you're not going to wind up -- the plaintiffs are not
15 going to forget about you, and there are numbers of
16 people who we asked to show up today who didn't show
17 up, and we're going to try to reach out to them in
18 another round. I am very patient.

19 Those individuals who I mentioned we'll have a
20 settlement discussion following this, and I think
21 that's the only issue. There are a number of default
22 motions that I mentioned, people who haven't shown up,
23 and I will take those under advisement.

24 Christopher Savasta, the order was returned unclaimed.

25 MS. RUST: Your Honor, the Court sent Mr. Savasta

1 notice of this hearing.

2 THE COURT: Right.

3 MS. RUST: Certified mail, and it was returned as
4 unclaimed. Plaintiffs then sent him to assure that he
5 had notice of this hearing, sent him notice via both
6 FedEx and via U.S. mail to the same address at which he
7 was served originally where he was served by substitute
8 service on his sister.

9 And, your Honor, after he was served with a
10 complaint Mr. Savasta did call and speak to plaintiffs,
11 so we do know that that was the correct address. It is
12 plaintiff's opinion that he simply did not claim the
13 mail, but he did have service.

14 THE COURT: And Ms. Cantone also returned as
15 unclaimed, Elisa Cantone? Cantone, Sturge and Ferrara
16 had on notice of this hearing had returned as
17 unclaimed, same circumstances?

18 MS. RUST: Same circumstances, your Honor. For
19 Ms. Cantone, let me represent to the Court we served
20 her at the 7 Karen Street address in Revere originally,
21 and that was on April 14th of 2007. When we received
22 notice that the notice of this hearing was returned as
23 unclaimed, we sent Federal Express and U.S. mail to her
24 both at her Karen Street address and a newer address
25 that was showing up in Acura, in public records, as

1 14 Pager Street, and we sent her notice of that hearing
2 at both addresses that were showing up.

3 THE COURT: Same with Sturge and Ferrara and
4 Scott?

5 MS. RUST: Ms. Ferrara had both a Framingham
6 address, which was her permanent address, as well as an
7 Amherst, Massachusetts address, which was her school
8 address, and, same, we sent both a Federal Express and
9 U.S. mail notice to both of those.

10 THE COURT: And Scott?

11 MS. RUST: Scott, we sent her Federal Express and
12 U.S. mail notice to the address at which she was
13 served, and we did have extensive discussions with
14 Ms. Scott prior to filing this action.

15 THE COURT: Okay. Well, I will take these under
16 advisement. I'm not exactly sure what I will do with
17 respect to the defaults, but I will look at them again.
18 I just want assurances that the addresses that we have
19 for them are correct. There's a conference room right
20 out here, an attorneys' conference room, and I'm happy
21 to have you use it to be able to confer. Thank you.

22 THE CLERK: All rise.

23 (A recess was taken.)

24 THE CLERK: All rise. United States District
25 Court is now in session. You can be seated. First, I

1 understand that Mr. Atkinson, that you've settled the
2 case?

3 MR. MANN: Yes.

4 THE COURT: Why don't you put that on the record.
5 This is the case against Mr. Atkinson, it was in a
6 default, it was in the supplementary process posture,
7 but you've come to a settlement?

8 MR. MANN: That's right.

9 THE COURT: Will we have something in writing or
10 do you want to put it on the record? Go right ahead.

11 MR. MANN: Mr. Atkinson and the plaintiff have
12 agreed to resolve this matter on a payment plan of \$50
13 per month. It's going to take approximately seven
14 years and eight months for the judgment amount to be
15 paid off, and the judgment of \$4,650 is the amount to
16 which Mr. Atkinson will ultimately pay in full, and the
17 payments are going to be made to the lawfirm of
18 Arnowitz & Goldberg beginning the first payment no
19 later than July 31st and successive \$50 a month
20 payments thereafter.

21 THE COURT: And no interest?

22 MR. MANN: No interest.

23 THE COURT: Thank you. I'm glad you came. Thank
24 you very much. You don't have to stay.

25 (Whereupon, the hearing was suspended at

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3:34 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)
CITY OF BOSTON)

I, Valerie A. O'Hara, Registered Professional Reporter, do hereby certify that the foregoing transcript was recorded by me stenographically at the time and place aforesaid in CV No. 03-11661-NG, Capital Records vs. Alajuan and CV No. 04-12434-NG, London Sire Records vs. Does 1 through 4 and thereafter by me reduced to typewriting and is a true and accurate record of the proceedings.

/S/ VALERIE A. O'HARA

VALERIE A. O'HARA

REGISTERED PROFESSIONAL REPORTER