# 23-194

# United States Court of Appeals

for the

Second Circuit

In re

JOHN WAITE et al.,

Petitioners,

- V. -

UMG RECORDINGS, INC. et al.,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

#### RESPONDENTS' OPPOSITION TO FED. R. CIV. P. 23(f) PETITION

Ariel Atlas Sidley Austin LLP New York, New York 10019 (212) 839-5300 Rollin Ransom Lisa Gilford 555 West Fifth Street Los Angeles, CA 90013 (213) 896-6047

Counsel for Respondents



#### **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel for the Respondents in the above captioned action certifies that:

Respondents UMG Recordings, Inc. and Capitol Records, LLC, by and through their undersigned counsel, hereby certify that they are wholly-owned indirect subsidiaries of Universal Music Group, N.V., a Netherlands public limited company. No other publicly-held company owns 10% or more of the stock of UMG Recordings, Inc. or Capitol Records, LLC. Vivendi SE and Compagnie de Cornouaille SAS are publicly-traded companies organized under the laws of France and own more than 10% of Universal Music Group N.V.'s stock. No other publicly-held company owns 10% or more of Universal Music Group N.V.'s stock.



# **TABLE OF CONTENTS**

<b>INTR</b>	ODUCTION	1
STAT	ΓEMENT OF THE CASE	3
COU	NTERSTATEMENT OF THE QUESTION PRESENTED	8
ARG	UMENT	8
I.	PETITIONERS FAIL TO DEMONSTRATE THAT THE DISTRICT COURT'S ORDER EFFECTIVELY TERMINATES THE LITIGATION, LET ALONE MAKE A SUBSTANTIAL SHOWING THAT THE ORDER IS QUESTIONABLE	
A.	The Order Denying Certification Is Not The "Death Knell" Of Petitioner Individual Cases	
В.	Petitioners Have Not Made A "Substantial Showing" That The Order Is "Questionable."	4
II.	THE DISTRICT COURT'S ORDER DOES NOT IMPLICATE A LEGAL QUESTION OF FUNDAMENTAL IMPORTANCE, OR ONE LIKELY TO ESCAPE REVIEW	С



### **TABLE OF AUTHORITIES**

	Page(s)
Cases	
Aymes v. Bonelli, 980 F.2d 857 (2d Cir. 1992)	16
Baldwin v. EMI Feist Catalog, Inc., 989 F. Supp. 2d 344 (S.D.N.Y. 2013), rev'd and remanded, 805 F.3d 18 (2d Cir. 2015)	13
Barnes v. Am. Tobacco Co., 161 F.3d 127 (3d Cir. 1998)	19
Berni v. Barilla S.p.A., 964 F.3d 141 (2d Cir. 2020)	19
Blair v. Equifax Check Servs., Inc., 181 F.3d 832 (7th Cir. 1999)	, 11, 12
Chamberlan v. Ford Motor Co., 402 F.3d 952 (9th Cir. 2005) (per curiam)	10
Champlin v. Music Sales Corp., 604 F. Supp. 3d 224 (S.D.N.Y. 2022)	13
Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989)7, 16	, 17, 18
<i>In re Delta Air Lines</i> , 310 F.3d 953 (6th Cir. 2002) (per curiam)	11
Ebert v. Gen. Mills, Inc., 823 F.3d 472 (8th Cir. 2016)	19
Gianniello v. ALM Media, LLC, 726 F.3d 106 (2d Cir. 2013)	2, 15
Huebbe v. Oklahoma Casting Co., 663 F. Supp. 2d 1196 (W.D. Okla. 2009)	16



Innovative Networks, Inc. v. Sattelite Airlines Ticketing Ctrs., Inc., 871 F. Supp. 709 (S.D.N.Y. 1995)	16
<i>JAH IP Holdings, LLC v. Mascio</i> , No. 13-cv-62195-MSK, 2014 WL 6477923 (D. Colo. Nov. 19, 2014)	16
JustMed, Inc. v. Byce, 600 F.3d 1118 (9th Cir. 2010)	16
In re LIBOR-Based Fin. Instruments Antitrust Litig., 299 F.Supp.3d 430 (S.D.N.Y. 2018)	21
In re Lorazepam & Clorazepate Antitrust Litig., 289 F.3d 98 (D.C. Cir. 2002)	15, 21
Mitchell v. 3PL Sys., Inc., No. SACV 11-534 AG, 2012 WL 12886845 (C.D. Cal. Apr. 9, 2012)	16
In re Nifedipine Antitrust Litig., No. 08-8014, 2009 U.S. App. LEXIS 3643 (D.C. Cir. Feb. 23, 2009)	11
<i>Prado-Steiman</i> , 221 F.3d at 1274-75	14, 15
In re Rezulin Prods. Liability Litig., 210 F.R.D. 61 (S.D.N.Y. 2002)	19
Sasnett v. Convergent Media Sys., Inc., No. C.A. 95-12262-NG, 1997 WL 33142149 (D. Mass. Aug. 29, 1997).	16
Scorpio Music S.A. v. Willis, No. 11-cv-1557 BTM (RBB), 2012 WL 1598043 (S.D. Cal. May 7, 2012)	13
Sumitomo Copper Litigation v. Credit Lyonnais Rouse, Ltd., 262 F.3d 134 (2d Cir. 2001)	passim
Teamster Loc. 445 Freight Div. Pension Fund v. Bombardier, Inc., 546 F. 3d 196 (2d Cir. 2008)	17



# DOCKET

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

# **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

### **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

#### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

#### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

