

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_)  
CAPITOL RECORDS, INC., *et al.*, )  
 )  
Plaintiffs, ) Civ. Act. No. 03-CV-11661-NG  
 ) (LEAD DOCKET NUMBER)  
v. )  
 )  
NOOR ALAUJAN, )  
 )  
Defendant. )  
\_\_\_\_\_)

\_\_\_\_\_)  
SONY BMG MUSIC ENTERTAINMENT, *et al.*, )  
 )  
Plaintiffs, ) Civ. Act. No. 07-CV-11446-NG  
 ) (ORIGINAL DOCKET NUMBER)  
v. )  
 )  
JOEL TENENBAUM, )  
 )  
Defendant. )  
\_\_\_\_\_)

**DEFENDANT’S CONDITIONAL MOTION TO COMPEL DEPOSITION OF  
MATTHEW OPPENHEIM ON JANUARY 22, 2009**

Defendant respectfully submits this Conditional Motion to Compel Deposition of Matthew Oppenheim and states as follows:

Plaintiffs’ representative Matthew Oppenheim (the “Deponent”) failed, after having been properly served with a notice of deposition and a subpoena, to appear in accordance with their terms. Plaintiffs filed no reply to either. If Plaintiffs’ Motion to Stay the Court’s order relating to Internet (Dkt. No. 733) is granted, then Defendant respectfully requests a postponement of the

omnibus hearing scheduled by the Court for January 22, 2009 and use of the time to depose Mr. Oppenheim. Wherefore, Defendant respectfully moves that the Court compel Deponent to appear for deposition before a notary public qualified to administer oaths in the Commonwealth of Massachusetts at Ames Courtroom, Harvard Law School, 1515 Massachusetts Avenue, Cambridge, Massachusetts, at 10:00 a.m. on January 22, 2009, continuing thereafter until completed. Pursuant to Rule 30(b)(3)(A) of the Federal Rules of Civil Procedure, the deposition will be recorded audiovisually (not webcast). Pursuant to Local Rule 7.1(a)(2), Defendant certifies that he has in good faith conferred with Deponent's counsel in an effort to secure his appearance for deposition without court action.

JOEL TENENBAUM.

By his attorney,

Dated: January 20, 2009

/s/Charles R. Nesson  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 20, 2009, a copy of the foregoing **DEFENDANT'S CONDITIONAL MOTION TO COMPEL DEPOSITION OF MATTHEW OPPENHEIM ON JANUARY 22, 2009** was served upon the Plaintiffs via first class mail, postage pre-paid, and electronic mail (where available), at the following addresses:

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