

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 1:07-cv-11446-NG
))	(ORIGINAL DOCKET NUMBER)
v.)	
JOEL TENENBAUM,)	
) Defendant.)	
_____)	

NOTICE OF ORDER AND REQUEST FOR HEARING

Background

In its order issued on January 14, 2009 (the “January 14 Order”), the Court granted a motion by Defendant to permit the recording and broadcasting of a hearing that was then scheduled for January 22, 2009.

On January 16, 2009, Plaintiffs filed a Petition for a Writ of Mandamus or Prohibition (the “Petition”) with the United States Court of Appeals for the First Circuit addressing the Court’s January 14 Order. Plaintiffs also sought a stay of the January 14 Order pending the First Circuit’s decision on the Petition. On January 20, 2009, this Court continued the January 22, 2009 hearing to February 24, 2009.

On February 18, 2009, the First Circuit issued an Order setting oral argument on the Petition for April 7, 2009. Recognizing that oral argument would take place after both the February 24, 2009 hearing and the current March 30, 2009 trial date in this case, the First Circuit further ordered, as follows:

We stay the district court's order of January 14, 2009 (already temporarily stayed by the district court) permitting narrowcasting, pending disposition of this mandamus petition or further order of this court, whichever first occurs. We recognize that a hearing is currently scheduled in the district court for February 24, 2009 and that trial is scheduled to commence on March 30, 2009. The district court may either stay its proceedings pending our decision on the petition or it may permit the presently scheduled hearing and/or other proceedings in the case to go forward, but without being narrowcast.

(First Circuit Order of Feb. 18, 2009, Exhibit A hereto).

REQUEST FOR HEARING

Plaintiffs respectfully request that the hearing currently set for February 24, 2009, proceed as scheduled.

This case was initially filed on August 7, 2007, and has been subject to many delays and continuances. While the parties have proposed discovery schedules for the Court (see, e.g., DE # 694, 701, 707, 708, 737), no formal discovery schedule has yet been entered. Nor has the Court yet addressed the parties' requests for the entry of a Protective Order relating to outstanding discovery issues. See DE # 672, 682.

Moreover, to date, Defendant has refused to provide fundamental discovery relating to the merits of Plaintiffs' claims, including (but not limited to) his Rule 26(a)(1) initial disclosures, access to his computer hard drive(s), and access to various homemade CDRs that likely contain infringing material. Moreover, despite expressing an intent to call nine different expert witnesses in this case (see, e.g., DE # 694), Defendant has declined to provide Plaintiffs with a single expert report in accordance with Rule 26(a)(2). Defendant's consistent failures to provide

this basic discovery has necessarily limited Plaintiffs' ability to complete the depositions needed in connection with this matter.

Plaintiffs seek a hearing in order to have the Court address these issues which have been outstanding for several months. In addition, Plaintiffs note that the following motions are fully briefed and are currently pending before the Court:

1. Plaintiffs' Motion to Dismiss Counterclaims Asserted by Defendant Joel Tenenbaum (DE # 670);
2. Defendant's Motion for Protective Order [Relating to Proposed Computer Inspection] (DE #672);
3. Defendant's Motion to Add the Recording Industry Association of America (RIAA) as a Party to Defendant's Amended Counterclaim (DE #693);
4. Defendant's Motion to Amend Counterclaim (DE #686);
5. Plaintiffs' Motion to Compel Discovery Responses from Defendant Joel Tenenbaum (DE # 709); and
6. Defendant's Motion to Compel Deposition of Matthew Oppenheim (DE #736).

Finally, while the First Circuit has left it to this Court to decide whether to stay any or all of its proceedings pending its ruling on the Petition, Plaintiffs respectfully submit that the issues currently pending before the First Circuit are collateral to the merits of the case and to the many discovery-related disputes that are currently pending before this Court. To the extent that this Court is otherwise inclined to stay some portion of its proceedings pending a ruling from the First Circuit, Plaintiffs respectfully request, at a minimum, that the Court hold a hearing to address the various pending discovery disputes so that the parties can continue to work efficiently and complete discovery while the Petition is being considered.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the hearing currently set for February 24, 2009 go forward as scheduled so that the Court can hear argument and address the pending discovery disputes and other motions.

Respectfully submitted this 19th day of February 2009.

SONY BMG MUSIC ENTERTAINMENT;
WARNER BROS. RECORDS INC.;
ATLANTIC RECORDING CORPORATION;
ARISTA RECORDS LLC; and UMG
RECORDINGS, INC.

By their attorneys,

By: s/ Daniel J. Cloherty

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 19, 2009.

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