

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
CAPITOL RECORDS, INC., et al. )	
) Plaintiffs, )	
v. )	
NOOR ALAUJAN, )	
) Defendant. )	
_____ )	
	Civ. Act. No. 03-CV-11661-NG (LEAD DOCKET NUMBER)
_____ )	
SONY BMG MUSIC ENTERTAINMENT )	
et al.  ) Plaintiffs, )	
v. )	
JOEL TENENBAUM, )	
) Defendants. )	
_____ )	
	Civ. Act. No 1:07-cv-11446-NG (ORIGINAL DOCKET NUMBER)

**PLAINTIFFS’ NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF  
PLAINTIFFS’ OPPOSITION TO MOTION FOR LEAVE TO AMEND**

Plaintiffs respectfully submit the attached orders in UMG Recordings, Inc. v. Martino, Case No. 4:08-cv-1756 (M.D. Pa. April 21, 2009) (Exhibit A) and Motown Record Company, L.P. v. Kovalcik, Case No. 2:07-cv-04702-AB (E.D. Pa. February 23, 2009) (Exhibit B) as supplemental authority in support of Plaintiffs’ Opposition Motion to Amend Answer to Amended Complaint (Doc. No. 703).

In Martino, a copyright infringement action, the facts of which are similar to the facts in this case, the court granted plaintiffs’ motion to dismiss Defendant’s abuse of process counterclaim and denied her leave to amend, finding “plaintiffs have a right to protect their

copyright interests via the litigation process” and defendant “cannot demonstrate that plaintiffs’ claims are ‘completely baseless’ because plaintiffs had probably cause to institute these civil proceedings and reasonably expect success on the merits.” Martino, Ex. A, at 9. The court therefore concluded that plaintiffs actions were protected by the Noerr-Pennington doctrine and did not satisfy the sham litigation exception.

Similarly, in Kovalcik, another, similar, file-sharing case, the court dismissed defendant’s counterclaim for abuse of process, finding that “Plaintiffs have a right to protect their business interests, which in this case comes in the form of copyright and have done so within the boundaries of the law and Court-sanctioned procedures. Therefore, Defendant’s counterclaim of abuse of process is barred by the Noerr-Pennington Doctrine.” Kovalcik, Ex. B, at 10.

Dated: April 28, 2009

Respectfully submitted,

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

By their attorneys,

/s/ Eve G. Burton

---

Eve G. Burton (pro hac vice)  
Timothy M. Reynolds (pro hac vice)  
HOLME ROBERTS & OWEN LLP  
1700 Lincoln, Suite 4100  
Denver, Colorado 80203  
Telephone: (303) 861-7000  
Facsimile: (303) 866-0200  
Email: eve.burton@hro.com  
timothy.reynolds@hro.com

Daniel J. Cloherty (BBO #565772)  
DWYER & COLLORA, LLP  
600 Atlantic Avenue - 12th Floor  
Boston, MA 02210-2211  
Telephone: (617) 371-1000  
Facsimile: (617) 371-1037  
dcloherty@dwyercollora.com

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 28, 2009, the foregoing **PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO AMEND** was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). A copy of the foregoing was also served by United States Mail on the following:

Charles Nesson  
1575 Massachusetts Avenue  
Cambridge, MA 02138  
nesson@gmail.com  
Attorney for Defendant

Ray Beckerman  
Ray Beckerman, P.C.  
108-18 Queens Boulevard (4<sup>th</sup> Floor)  
Forest Hills, NY 11375  
ray@beckermanlegal.com  
Attorney for Free Software Foundation

*/s/ Eve G. Burton*

---

Eve G. Burton (pro hac vice)  
HOLME ROBERTS & OWEN LLP  
1700 Lincoln, Suite 4100  
Denver, Colorado 80203  
Telephone: (303) 861-7000  
Facsimile: (303) 866-0200  
Email: eve.burton@hro.com