

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

PLAINTIFFS’ MOTION FOR CLARIFICATION

On July 14, 2009, the Court issued an Order (the “Order”) requiring additional briefing on an issue relating to the Plaintiffs’ Motion for Partial Summary Judgment. Pursuant to that Order, the parties are to address that issue in supplemental briefs to be filed on July 20, 2009, at 9:00 a.m., shortly before the 9:30 a.m. scheduled pretrial conference at which the Court has previously indicated the Motion for Partial Summary Judgment is to be argued. See Transcript of Proceedings, June 26, 2009, at 38-39 (attached hereto as Exhibit A).

In its concluding paragraph, however, the Court’s Order indicates that the Defendant’s supplemental brief shall be incorporated into Defendant’s Opposition to the Motion for Summary Judgment, which the Court now states is *also due* on July 20, 2009 at 9:00 a.m. See Order at 4. Accordingly, the Order suggests that Defendant’s Opposition to the Summary Judgment Motion is now due a mere thirty minutes before that Motion may be argued, a result that the Court and the parties have previously indicated would be unworkable. See Exhibit A at 39 (considering

moving the due date for Defendant's Opposition to July 20, 2009, but concluding that the Court would "have to keep to the original dates because there's no other way to do this"). Indeed, if Defendant's Opposition is not due until July 20, 2009, neither Plaintiffs' counsel or the Court will have an opportunity to review and consider the Defendant's Opposition before the conference on that date.

Plaintiffs respectfully request that the Court clarify its Order and require that the Defendant's Opposition to the Summary Judgment Motion be filed on Friday, July 17, 2009, in accordance with the Court's prior Orders of June 16, 2009 and July 6, 2009. Both Defendant and Plaintiff can then file supplemental briefs relating to the issue presented in the Court's issue on the morning of July 20, 2009 as the Court has indicated. As the Court knows, Plaintiffs and Defendants have previously agreed to a shortened briefing period for the Plaintiffs' Summary Judgment Motion in order to accommodate Defendant's travel plans to Italy, and to allow Defendant additional time to prepare for his deposition upon his return. See Joint Assented-to Motion to Amend Schedule (filed July 3, 2009). Indeed, Plaintiffs have attempted to extend the Defendant and his counsel every possible courtesy in an effort to complete the briefing and consideration of the issues presented in the Summary Judgment Motion in advance of the conference on July 20, 2009, and the trial on July 27, 2009.

Plaintiffs are not only concerned that any additional extension of time for the filing of Defendant's Opposition will leave Plaintiffs in a position where they are unprepared for oral argument on July 20, 2009, they are also concerned that the additional delay in the filing of Defendant's Opposition may ultimately delay the Court's consideration of that Summary Judgment Motion itself. As the Court likely knows, the fair use issues presented in that Motion could dramatically affect the scope of the trial in this matter, including the type of evidence

admitted at trial, the total number of witnesses, and the content of their testimony. Accordingly, the parties had hoped to have those issues resolved reasonably in advance of trial in order to ensure that the trial proceeds in an orderly fashion. Indeed, the Court has previously indicated that it wanted the issue to be addressed at the Pretrial Conference on July 20, 2009, leaving the parties one week to prepare for trial. See Exhibit A.

Accordingly, Plaintiffs respectfully request that the Court clarify its Order of July 14, 2009, and require the Defendant to file his Opposition to the Plaintiffs' Motion for Summary Judgment on Friday, July 17, 2009, with the supplemental briefs addressing the issue presented in the Court's Order due on the morning of Monday, July 20, 2009.

Respectfully submitted this 14th day of July, 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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ATTORNEYS FOR PLAINTIFFS

RULE 7.1(A) CERTIFICATION

Undersigned counsel for the Plaintiffs hereby certifies that he has conferred with Charles Nesson, counsel for the Defendant, regarding the issues presented in the foregoing Motion and has attempted in good faith to resolve or narrow the issues presented herein. Mr. Nesson has declined to assent to the relief requested in this Motion.

/s/ Daniel J. Cloherty

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 July 14, 2009.

/s/ Daniel J. Cloherty