

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.)	
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SONY BMG MUSIC ENTERTAINMENT,)	
et al.,)	
Plaintiffs,)	Civ. Act. No. 07-cv-11446-NG
)	(ORIGINAL DOCKET NUMBER)
v.)	
)	
JOEL TENENBAUM,)	
)	
Defendant.)	
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PLAINTIFFS’ MOTION IN LIMINE TO PRECLUDE OBERHOLZER-GEE FROM TESTIFYING AS EXPERT WITNESS

Plaintiffs respectfully submit this Motion in Limine to Preclude Felix Oberholzer-Gee from testifying as an expert witness, and in support state as follows:

In Defendant’s Witness List, Defendant announced, for the first time, that he may call Felix Oberholzer-Gee as an expert witness. (Doc. 893¹.) Defendant, however, has failed to comply with the most basic principles of Rule 26(a)(2). Indeed, Defendant failed to disclose Oberholzer-Gee as an expert until four months after the deadline to do so (doc. 759), and has not, to date, produced an expert report. Moreover, it appears that Oberholzer-Gee has not even

¹ Defendant served his Witness List on Plaintiffs on July 17, 2009.

agreed to testify on Defendant's behalf at trial. (Doc. 893 at 2) ("Defendant cannot currently confirm Prof. Oberholzer-Gee as an expert but intends to call him logistics and the Court allow."). In fact, as of July 21, 2009, Defendant's counsel informed Plaintiffs' counsel that he was not even sure if Oberholzer-Gee was in Massachusetts for the summer or if he was available.

In his Witness List, Defendant acknowledges that "this is late beyond set limits," but appears to assume that Oberholzer-Gee's testimony will be allowed because, according to Defendant, "he is the best on this subject." (*Id.* at 2). While Plaintiffs vehemently disagree with Defendant's assessment, it is of no moment, as his disclosure is "simply too late." (Minute Entry dated July 17, 2009). This Court previously held that "the failure to provide complete and specific materials describing the experts' opinions and the basis for those opinions by [June 22, 2009] and no later, will work a substantial prejudice on the Plaintiffs – one which the Court will not allow," (doc. 850 at 3). Indeed, the Court already denied Defendant's motion to add Wayne Marshall as an expert witness as "simply too late. The deadline for identifying experts was 3 months ago and the deadline for supplementing expert reports was June 22, before the witness that was the subject of this motion was even proposed as an expert." (Minute Entry dated July 17, 2009).

As Defendant failed to disclose Oberholzer-Gee and has not, to date, provided an expert report, as required, Plaintiffs respectfully request their reasonable attorneys' fees incurred in bringing this Motion, pursuant to Fed. R. Civ. P. 37(c)(1).

Accordingly, Plaintiffs respectfully request that the Court enter an order precluding Oberholzer-Gee from testifying at trial and awarding Plaintiffs their reasonable attorneys' fees incurred in bringing this Motion.

Respectfully submitted this 22nd 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/ Eve G. Burton

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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 July 22, 2009.

s/ Eve G. Burton _____