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August 7, 2008

Hon. Nancy Gertner
United States District Court, District of Massachusetts
John Joseph Moakley U. S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210

Re: *Capitol Records, Inc., et al. v. Alaujan*, (Civ. Act. No. 03-Cv-11661-NG)
(Lead Docket Number) (D. Mass), *SONY BMG MUSIC ENTERTAINMENT,
et al. v. Tenenbaum*, Civ. Act. No 1:07-cv-11446-(Original Docket Number).

Dear Judge Gertner:

Plaintiffs are writing in opposition to Defendant Joel Tenenbaum's request to cancel the mediation scheduled in this case for August 27, 2008 with Magistrate Judge Timothy S. Hillman. Plaintiffs filed the Complaint against Joel Tenenbaum on August 7, 2007 for damages and injunctive relief under the Copyright Act, based upon the representation made by an attorney calling Plaintiffs on behalf of Mr. Tenenbaum's parents that Mr. Tenenbaum is the individual responsible for the infringement at issue. Notwithstanding this identification, Mr. Tenenbaum filed a *pro se* answer on September 1, 2007, denying responsibility for the copyright infringement at issue.

Mr. Tenenbaum has engaged in frivolous motions practice throughout this case, which has resulted in needlessly increasing the cost of the litigation. During the fall and winter of 2007, Mr. Tenenbaum filed a motion to dismiss, a motion for summary judgment, a motion to amend, and two motions for sanctions. At the January 29, 2008 status conference, the Court denied almost every one of Mr. Tenenbaum's frivolous motions.¹



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¹ At the June 17, 2008 hearing, the Court granted Mr. Tenenbaum's Motion to Amend his Answer. Plaintiffs maintain that the proposed counter-claim asserting that statutory damages under the Copyright Act are unconstitutional is improper and intend to move to dismiss any such counter-claim for failure to state a claim.

ROBINSON & COLE LLP

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Mr. Tenenbaum faces enormous potential liability for his infringement of Plaintiffs' copyrighted sound recordings. Under § 504 of the Copyright Act, 17 U.S.C. § 101 *et seq.* plaintiffs may elect either statutory or actual damages. Statutory damages can vary from a minimum of \$750 to a maximum of \$30,000 *per violation*. 17 U.S.C. §504(c)(1). In this case, Plaintiffs are currently pursuing claims against Mr. Tenenbaum for 30 violations of Plaintiffs' copyrights. Thus, minimum statutory damages for these recordings alone are \$22,500.

At the June 17, 2008 hearing, the Court ordered the parties to participate in a settlement conference immediately following the hearing. During that settlement conference, the parties engaged in good faith settlement discussions. The parties agreed to mediation in order to continue the settlement discussion. Plaintiffs were hopeful that mediation could result in the prompt resolution of this matter.

While Mr. Tenenbaum recently informed the Court that he wished to cancel the mediation and proceed to trial, Plaintiffs believe that a Magistrate Judge's candid assessment might help the parties resolve this case.

Plaintiffs look forward to working towards a prompt resolution of this matter.

Thank you very much.

Sincerely,



Claire Newton

cc: Laurie Rust (*by email*)
Joel Tenenbaum (*by U.S. mail*)

