

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

2008 NOV -5 A 10 22

CAPITOL RECORDS, INC. et al.,  
Plaintiffs,

v.

NOOR ALAUJAN,  
Defendant.

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
Civ. Act. No. 07-cv-11446-NG  
(LEAD DOCKET NUMBER)

SONY BMG MUSIC ENTERTAINMENT, et al.  
Plaintiffs,

v.

JOEL TENENBAUM  
Defendant.

Civ. Act. No. 07-cv-11446-NG  
(ORIGINAL DOCKET NUMBER)

**DEFENDANT'S AMENDED COUNTERCLAIM**

Pursuant to Fed. R. Civ. P. 13, Defendant Joel Tenenbaum submits the following amended counterclaim against all Plaintiffs of record in this case. Defendant is currently attempting to join Recording Industry Association of America ("RIAA") as a counterclaim defendant under Local Rule 15.1 with Motion under Fed. R. Civ. P. 19 and 20 to follow. Defendant intends the following counterclaim to be asserted against RIAA as well.

**JURISDICTION AND VENUE**

1. This is a federal counterclaim seeking actual damages and such punitive damages as the Court sees fit for abuse of federal process.

2. This Court has jurisdiction to allow redress to Defendant for such abuse under its inherent authority. *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764-765; *Nationwide Charters and Conventions, Inc. v. Garber*, 254 F.Supp 85 (D. C. Mass. 1966).

3. Defendant alternatively asserts a counterclaim against Plaintiffs under state law for abuse of process. *Am. Mgmt. Servs. v. George S. May Int'l*, 933 F. Supp. 64, 68 (D. Mass. 1996).

4. This Court has supplemental jurisdiction for the state counterclaim. 28 U.S.C. § 1367.

### **PARTIES**

5. Defendant and counterclaim Plaintiff Joel Tenenbaum is a Massachusetts resident with his primary residence in Massachusetts.

6. Plaintiffs and counterclaim Defendants Sony BMG Music Entertainment, Warner Bros. Records Inc., Atlantic Recording Corporation, Arista Records LLC, and UMG Recordings are corporations or partnerships organized under the laws of Delaware, each with respective principal places of business identified in Plaintiffs' Complaint (Case # 1:07-cv-11446-NG; Doc. No. 1).

7. On information and belief, counterclaim Defendant RIAA is a trade association headquartered in Washington D.C. and controlled by the five above-identified counterclaim Defendants. The Plaintiffs of record and RIAA will collectively be referred to herein as "Plaintiffs."

### **COUNT 1: ABUSE OF FEDERAL PROCESS**

8. Plaintiffs filed a civil action on September 8, 2003, seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C §101 et seq.). Plaintiffs alleged that Joel Tenenbaum violated their rights of reproduction and distribution by using

an online media distribution system to download Copyrighted Recordings. Plaintiffs specified the seven recordings alleged to have been downloaded by Defendant in Exhibit A of the Complaint.

9. The suit against Defendant was one part of a larger mass-litigation campaign. Plaintiffs have threatened or initiated legal action against at least 30,000 similar suits against other individuals throughout the country.

10. Plaintiffs have worked in concert to conduct this mass-litigation campaign.

11. Plaintiffs did not file this suit primarily to seek redress against Defendant for harm that he allegedly caused nor for the primary purpose of deterring him from further copyright infringement.

12. Plaintiffs filed this suit primarily to advance illegitimate ulterior purposes identified below. None of these ulterior purposes are properly involved in this proceeding and, individually and collectively, constitute an abuse of process.

13. Plaintiffs' illegitimate ulterior purposes include unlawfully sacrificing Defendant to intimidate other Internet users into altering the norms of Internet usage. Plaintiffs intimidate others by seeking damages grossly disproportionate to what restitution or deterrence could justify.

14. Plaintiffs' illegitimate ulterior purposes include unlawfully sacrificing Defendant to intimidate other accused infringers into settling without exercising their constitutional right to have their defenses heard in court. Plaintiffs do this by seeking damages grossly disproportionate to what restitution or deterrence could justify and by harassing Defendant and invading his privacy to a degree that will intimidate others into settling. In order for the tactic to have credibility, they are making Defendant suffer an unduly protracted litigation battle and excessive damages.

15. Plaintiffs' illegitimate ulterior purposes include intimidating and coercing Internet Service Providers ("ISPs") into installing Internet content filters.

16. By flooding ISPs with subpoenas demanding the release of customer names, or student names in the case of University ISPs, Plaintiffs hope that ISPs will install filters to stop the harassment of the subpoenas, protect their customers or students, and/or ensure that Plaintiffs do not sue the ISPs themselves.

17. Plaintiffs seek to continue the onslaught of lawsuits to convince Congress that it must require ISPs to install filters as a way to put an end to the litigation campaign.

18. In their attempts to advance their ulterior purposes, Plaintiffs abuse prosecutorial discretion unconstitutionally conferred upon them by Congress and abuse a statutory scheme providing for unconstitutional damages.

19. Defendant reserves the right to further identify other ulterior purposes after conducting discovery.


20. The conduct against Defendant has caused and is causing actual harm to Defendant and his family. Because Plaintiffs' use of federal process against Defendant is an unlawful abuse, Defendant seeks restitution and any punitive damages the Court sees fit for all of the costs and non-pecuniary harm he incurred from this proceeding. This includes, but is not limited to:

- a) Harm from Plaintiffs' attempt to strip Defendant of all digital privacy.
- b) Being subjected to numerous harassing, intimidating, and at times insulting telephone communications from opposing counsel.
- c) Spending money preparing court filings, traveling to and from court, traveling to and from depositions, traveling to and from meetings with counsel, and other expenses;
- d) Devoting countless hours to proceeding *pro se* during the initial stages of this litigation;
- e) Being submitted to extensive depositions, discovery requests, and interrogatory requests;

- f) Being forced to miss school and work;
  - g) Being subjected to the stigma of being a defendant in a federal lawsuit.
21. Defendant prays for judgment against Plaintiffs for:
- a) actual damages incurred;
  - b) such punitive damages as the Court, through judge or jury, sees fit; and
  - c) to such other and further relief, at law or in equity, general or special, to which Defendant may be entitled.

Dated: November 4, 2008

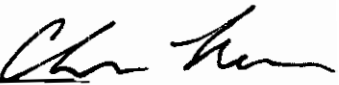
Respectfully submitted,

/s/ Charles R. Nesson   
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ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I, Charles Nesson, hereby certify that on November 4, 2008, a true copy of the above document will be served electronically on counsel for Plaintiffs.

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