

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
CAPITOL RECORDS, INC., et al., )	
) Plaintiffs, )	
) v. )	
) )	
NOOR ALAUJAN, )	
) Defendant. )	
_____ )	
SONY BMG MUSIC ENTERTAINMENT, )	
et al., ) Plaintiffs, )	
v. )	
) )	
JOEL TENENBAUM, )	
) Defendant. )	
_____ )	

Civ. Act. No. 03-cv-11661-NG  
(LEAD DOCKET NUMBER)

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

**PLAINTIFFS’ MOTION TO STRIKE DEFENDANT’S MOTION TO ADD THE RIAA  
AS A PARTY TO DEFENDANT’S AMENDED COUNTERCLAIM**

Plaintiffs respectfully submit this Motion to Strike Defendant’s Motion to Add the Recording Industry Association of America (“RIAA”) as a Party to Defendant’s Amended Counterclaim, and as support state the following:

**FACTUAL BACKGROUND**

On October 27, 2008, Defendant filed a Motion to Add the RIAA as a Party to Defendant’s Amended Counterclaim. Defendant, however, failed to comply with the requirements of Mass. Local Rule 15.1(b), which lays out procedures for adding new parties to an action. As such, Defendant’s Motion should be stricken.

Plaintiffs have many substantive bases for opposing Defendant's Motion. Once it is re-filed and properly before the Court, Plaintiffs intend to file a substantive opposition.

**Plaintiffs Attempted To Resolve This Deficiency Without Court Intervention.**

On October 29, 2008, Plaintiffs' counsel telephoned Defendant's counsel to alert him to of his failure to comply with Local Rule 15.1 and to suggest that he withdraw the Motion, serve it on the RIAA as required, and then re-file his Motion ten days later, in accordance with Rule 15.1. *See* Decl. of Eve Burton, ¶ 6. In response, Defendant's counsel told Plaintiffs' counsel that he was not aware of the Local Rule. *Id.* When Plaintiffs' counsel read him the Local Rule, he stated that he would not withdraw his deficient Motion because going through the process of a motion to strike would be an interesting lesson for his class of law students. *Id.* at ¶ 7. Plaintiffs' counsel underscored to Defendant's counsel that he was under a duty to read and comply with the Local Rules, that Plaintiffs proposed a reasonable solution, and that Plaintiffs should not bear the financial burden of teaching his students the importance of reading local rules of court. *Id.* Nonetheless, Defendant's counsel refused to withdraw the procedurally deficient Motion.

On November 4, 2008, Defendant served on Plaintiffs and stated he was serving on the RIAA, a copy of his Motion to Add the RIAA. *Id.* at ¶ 9. Defendant stated that he intends to file this Motion in ten days, in compliance with Local Rule 15.1. *Id.* Defendant has thus conceded that the original Motion was improperly filed and it should thus be stricken. Moreover, as Defendant has now stated his intention to comply with Local Rule 15.1, he will not suffer any prejudice if the Motion is stricken. Plaintiffs and the RIAA, however, would suffer prejudice if required to respond substantively to the improperly filed Motion.

## ARGUMENT

### **DEFENDANT'S MOTION SHOULD BE STRICKEN FOR FAILURE TO COMPLY WITH LOCAL RULE 15.1(b)**

Local Rule 15.1(b) requires that a party seeking to amend a pleading to add a new party serve the motion to amend on that party at least ten days before filing the motion. Mass. Local Rule 15.1(b). Similarly, a motion to amend to add a new party must include a certificate stating that it has been served in advance on the new party as required by Local Rule 15.1(b). *Id.*

This Court routinely strikes and denies motions which fail to comply with Local Rule 15.1. *See, e.g., Ali v. Univ. of Mass. Med. Ctr.*, 140 F. Supp. 2d 107, 111 (D. Mass. 2001) (denying motion to amend where party to be added was served with the motion for leave to amend on the same day that the motion was filed with the court); *Tabb v. Journey Freight Internations*, 2008 U.S. Dist. LEXIS 75718 (D. Mass. May 29, 2008) (denying motion to amend the complaint for failure to abide by Local Rule 15.1); *see also ICEM v Harvey Indus.*, Civil No. 07-10819 (D. Mass. July 17, 2008) (minute order denying motion without prejudice because it did not contain the certification required by Local Rule 7.1(a)(2)).

Similarly, the First Circuit has recognized the importance of complying with local rules. *Gwyn v. Loon Mt. Corp.*, 350 F.3d 212, 218 (1st Cir. 2003) (affirming district court's denial of motion to amend for *inter alia*, disregard of Local Rule 15.1's requirements); *3,888 Pounds of Atlantic Sea Scallops*, 857 F.2d 46 (1st Cir. 1988) (district court granted motion to strike, based on defendant's failure to respond within ten days as required by local rules); *Corey v. Mast Road Grain & Bldg. Materials Co., Inc.*, 738 F.2d 11 (1st Cir. 1984) (demanding adherence to specific mandates contained in the local rules).

Indeed, ignorance is not an excuse for failing to comply with local rules. *See Tobel v. City of Hammond*, 94 F.3d 360, 361-62 (7th Cir. 1996) ("Plaintiffs' lawyers admit that they were

not aware of the Local Rule. This is the end of the matter because the district court clearly has authority to enforce strictly its Local Rules, even if a default results”); *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (“Failure to follow a district court’s local rules is a proper ground for dismissal.”). *See also Dimmitt v. Ockenfels*, 407 F.3d 21, 24 (1st Cir. 2005) (failure to consult or to abide by an unambiguous court procedural rule, normally does not constitute “excusable neglect”).

Defendant’s Motion should be stricken because it fails to comply with the Local Rules and denies the proposed new party the benefit of Local Rule 15.1(b). Indeed, Defendant filed his Motion without serving it on the proposed new party, the RIAA, and thus without the required certification of service.

### CONCLUSION

The Court should strike Defendant’s Motion for failure to comply with the Local Rules. In the event the Court declines to strike Defendant’s Motion, Plaintiffs respectfully request ten days to respond to the Motion.

Respectfully submitted,

/s/ Eve G. Burton

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 12, 2008, a copy of the foregoing **PLAINTIFFS' MOTION TO STRIKE DEFENDANT'S MOTION TO ADD THE RIAA AS A PARTY TO DEFENDANT'S AMENDED COUNTERCLAIM** was served upon the Defendant via email and United States Mail at the following address:

Charles Nesson  
1575 Massachusetts Avenue  
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s/Eve G. Burton

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