

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., *et al.*,)
)
)
 Plaintiffs,) Civ. Act. No.
) 03-CV-11661-NG
 v.) (LEAD DOCKET NUMBER)
)
 NOOR ALAUJAN,)
)
)
 Defendant.)
)
)

SONY BMG MUSIC ENTERTAINMENT, *et al.*,)
)
)
 Plaintiffs,) Civ. Act. No.
) 07-CV-11446-NG
 v.) (ORIGINAL DOCKET NUMBER)
)
)
 JOEL TENENBAUM,)
)
)
 Defendant.)
)
)

DEFENDANT JOEL TENENBAUM'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Joel Tenenbaum respectfully moves the Court to dismiss Plaintiffs' Complaint (Original Dkt. No. 1) for failure to state a claim upon which relief can be granted. The grounds for this Motion are as follows:

- 1) If 17 U.S.C § 504(c) is interpreted as in the Plaintiffs' Complaint, then Congress has exceeded its authority by

delegating to private industry the power to prosecute punitive actions against noncommercial individuals.

2) If 17 U.S.C. § 504(c) applies, then it further violates due process because the damages with which it threatens the defendant are wholly disproportionate to his alleged offense.

Pursuant to Local Rule 7.1(b)(1), Defendant shall file a memorandum of law in support of this Motion.

Pursuant to Local Rule 7.1(a)(2), Defendant hereby certifies that he has in good faith attempted to confer with Plaintiffs' counsel; he believes they will oppose this Motion.

Wherefore, for the reasons set forth in this Motion and in his Memorandum in support thereof, Defendant moves that the Plaintiffs' Complaint be dismissed.

JOEL TENENBAUM.

By his attorneys,

Dated: March 9, 2009

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on March 9, 2009, I caused a copy of the foregoing **DEFENDANT JOEL TENENBAUM'S MOTION TO DISMISS** to be served upon the Plaintiffs via the Electronic Case Filing (ECF) system; first-class mail, postage pre-paid; and electronic mail, at the following addresses:

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