

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

Warner Bros. Records, Inc., a Delaware	§	
corporation; Capitol Records, Inc., a	§	
Delaware corporation; UMG Recordings,	§	
Inc., a Delaware Corporation; Sony BMG	§	
Music Entertainment, a Delaware general	§	
partnership; ARISTA Records LLC, a	§	
Delaware limited liability company; BMG	§	
Music, a New York general partnership;	§	
Plaintiffs,	§	Case No. Civ-06-00793-VML
vs.	§	
Tallie Stubbs,	§	
Defendant.	§	

**Defendant’s Motion for Leave to File Reply to Plaintiffs’ Response to Defendant’s Motion to Strike With Objections to Plaintiffs’ Motion for Leave to File Reply/Response Brief**

Comes now the Defendant and hereby moves the Court for leave to file a reply to Plaintiffs’ Response to Defendant’s Motion to Strike [Doc. 21] filed on October 10, 2006. Defendant requests the Court consider Defendant’s Exhibits 1 through 6 in reply to the Plaintiffs’ response to Defendant’s motion to strike.

Plaintiffs waited too long to investigate into the merits of their claims against Defendant Ms. Tallie Stubbs. Plaintiffs waited too long to decide whether to file a motion to dismiss with prejudice or a motion to dismiss without prejudice as shown by Defendant’s Answer with counterclaims and supporting exhibits. See, Defendant’s Exhibits 1 through 6 filed herewith.<sup>1</sup>

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<sup>1</sup>Defendant incorporates herein by reference thereto her motion to strike with objections to plaintiffs’ motion for leave to file reply/response brief [Doc. 20] filed on October 1, 2006. Plaintiffs’ seek to file a reply brief up to 25 pages.

In support of this motion, Defendant shows the following:

**1. Prefatory**

- a. On August 23, 2006 [Doc. 11] Defendant filed her answer and counterclaims seeking affirmative relief.
- b. On August 24, 2006, [Doc. 12], Plaintiffs filed a motion to dismiss without prejudice (and with prejudice) their Complaint pursuant to Fed. R. Civ. P. 41.

2. In Plaintiffs' October 10, 2006 response, they allege, at page 2, ¶ 4 [Doc. 21]:

“After Plaintiffs filed this lawsuit, and following further investigation, Plaintiffs decided to dismiss this matter without prejudice.”

- a. The complaint was filed on July 25, 2006. Plaintiffs served Defendant on August 3, 2006.
- b. Defendant seeks to address these inaccurate allegations. *See*, Defendant's Exhibits 1-6 filed here with.

3. In Plaintiffs' October 10, 2006 response, Plaintiffs allege, at page 2, ¶ 5 [Doc. 21]:

“On August 23, 2006, Plaintiffs drafted a Notice of Dismissal Without Prejudice, which they intended to file that day. Just before they filed this pleading, however, Plaintiffs received Defendant's Answer and Counterclaims.”

- a. Defendant seeks to address these inaccurate allegations. Plaintiffs did not file a notice of dismissal on August 23, 2006 which was allegedly prepared.
- b. *See*, Defendant's Exhibits 1-6 filed here with.

4. In Plaintiffs' October 10, 2006 response, Plaintiffs allege, at page 2, ¶ 5 [Doc. 21]:

“Plaintiffs immediately attempted to contact counsel for Defendant to discuss Plaintiffs’ desire to dismiss this matter, but counsel for Defendant was not responsive.”

- a. Defendant’s Exhibits 1 through 6 should be considered by the Court.
- b. Plaintiffs allegations are unfounded and unsupported by the facts shown by Defendant’s Exhibits 1-6.

**PLAINTIFFS’ SHOULD HAVE FILED A MOTION TO DISMISS ON AUGUST 21, 2006  
PRIOR TO DEFENDANT’S ANSWER DATE**

5. By email communication on Monday, August 21, 2006, at 3:19 P.M. Central Time, *defense counsel informed plaintiffs’ counsel* of the following:

“By Letter dated July 7, 2006 to Donald Kelso for the firm of Holme, Roberts & Owen, LLP, *Ms. Stubbs informed you that she did not download any copyrighted files. However, you filed the Complaint against Ms. Tallie Stubbs on July 25, 2006.*”

Defendant’s Exhibit 1 (8-21-06 email)(emphasis added).

*See*, Defendant’ Exhibit 1 (notified of representation of defendant with request for email confirmation of the date of service on defendant of the summons and complaint as August 3, 2006).

- i. Additional inquiries were made by defense counsel to plaintiffs’ counsel; i.e., what relief is sought and in what amount, Defendant’s Exhibit 1.
- ii. Defense counsel requested a prompt response from plaintiffs’ counsel. Defendant’s Exhibit 1.
- iii. Plaintiffs’ counsel Colin Martin’s paralegal responded by referring defense counsel to attorneys not of record in this case, Jim Ruh or Amy Bauer.

Defendant's Exhibit 1 (8-21-06).

6. By email communication on Monday, August 21, 2006 at 3:32 p.m. Central Time, the undersigned defense counsel informed Plaintiffs' counsel of record that she had filed an entry of appearance as counsel for Defendant Ms. Tallie Stubbs. Defendant's Exhibit 2 (Defense counsel recited the service date reflected in plaintiffs' return of service filed with the Clerk of Court as August 3, 2006.).
  - a. Plaintiffs and their counsel knew or should have known that Defendant's deadline to file an answer (with counterclaims) was scheduled by federal law for Wednesday, August 23, 2006.
7. On Wednesday, August 23, 2006, Defendant's Answer and Counterclaim [Doc. 11] was filed at 1:17 P.M. Central Time as reflected by the Court's file and the Notice of Electronic Filing received by the undersigned counsel for Defendant. *See* Defendant's Exhibits 1 - 4 to Answer and Counter Claims filed August 23, 2006.
8. On August 23, 2006, at 3:09 P.M. Central Time, the office of the undersigned defense counsel received a voice message from "Stacey Obenhouse" regarding "Paulie (sic) Stubbs." Defendant's Exhibit 3 (8-23-06 voice message on "AnsM" taken by the undersigned defense counsel). Stacey Obenhouse is not an attorney of record in this case.
9. On Thursday, August 24, 2006 at 2:11 P.M. the undersigned telephoned plaintiffs' counsel in Dallas, Texas to confer with opposing counsel. Plaintiff's Exhibit 6 (9-23-06 long distance phone bill). Immediately thereafter, the undersigned left her office for the afternoon.
10. On Thursday, August 24, 2006 at 2:16 P.M. Central Time, a voice message was recorded at

the undersigned defense counsel's office from attorney Colin Martin.

- a. In the August 24<sup>th</sup> voice message, Mr. Martin inquired as to whether defendant would "***stipulate to dismissal***" Defendant's Exhibit 4, pg. 2 (emphasis added).
  - b. The undersigned defense counsel personally wrote the voice message down on her law office message book upon her return to the office after 5:00 P.M. on August 24th Defendant's Exhibit 4 (2 pages).
  - c. On August 24, 2006 at 3:57 P.M. Central Time, Mr. Martin filed his motion to **dismiss without prejudice *and* to dismiss with prejudice** [Doc. 12].
11. On August 24, 2006 at 5:23 P.M., the undersigned counsel for defendant telephoned opposing counsel in Dallas, Texas. Plaintiff's Exhibit 6.
12. By email dated August 24, 2006 transmitted at 5:46 P.M. Central Time, the undersigned defense counsel informed plaintiffs' counsel of record of the following:
- a. defense counsel would only confer with counsel of record. Defendant's Exhibit 3 (8-23-06 voice message from Stacey Obenhouse not of record in the case).
  - b. on August 24, 2006, the undersigned defense counsel spoke to Mr. Martin who informed her "***that he had been out of the office on August 23<sup>rd</sup> and was not familiar with the status of the case against Ms. Stubbs.***" Defendant's Exhibit 5.
  - c. on August 24, 2006, the undersigned informed Mr. Martin that she would be out of my office in the afternoon and to email to her (and her co-counsel Mr. Henson) any communications that Mr. Martin (counsel of record) had regarding Ms. Stubbs'

answer and counter claim file (*sic*) on August 22<sup>nd</sup> (*sic*).<sup>2</sup>

- d. “My co-counsel, Mr. Henson, informed me that he received no messages from plaintiffs’ counsel. No attempt was made to contact him on August 23 or August 24 prior to the filing of your pleading on August 24<sup>th</sup>.”
- e. *See* Defendant’s Exhibit 5-6.<sup>3</sup>

Wherefore, Defendant requests the Court enter an order accepting the Defendant’s exhibit numbers 1 through 6 as Defendant’s reply brief to Plaintiffs’ response to Defendant’s motion to strike [Doc. 21] filed herein on October 10, 2006.

Defendant requests the Court enter an order dismissing the complaint filed against Defendant Tallie Stubbs with prejudice. *See*, Defendant’s Exhibits 1-4 to Answer and Counterclaims with request for affirmative relief. Defendant request the Court award her attorney’s fees, costs and expenses pursuant to the authorities relied upon by Defendant, including but not limited to the Copyright Act.

Respectfully submitted,  
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-And-

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<sup>2</sup>Plaintiffs’ motion to dismiss with prejudice and without prejudice was filed on August 24, 2006 at 3:57 P.M.

<sup>3</sup>Defense counsel for Ms. Tallie Stubbs are sole practitioners and do not office at the same addresses.

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Counsel for Defendant

**CERTIFICATE OF SERVICE**

This is to certify that on this 24th day of October, 2006 a true and correct copy of the above and foregoing was transmitted to the following Counsel of Record via the Court's Notice of Electronic Filing System:

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