

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

Capitol Records, Inc., et al.,	§	
Plaintiffs,	§	
vs.	§	Case No. CIV-04-1569-W
Debbie Foster and Amanda Foster,	§	
Defendants.	§	

Supplemental Declaration of Marilyn D. Barringer-Thomson

I, Marilyn D. Barringer-Thomson, of lawful age and having been first duly sworn hereby affirm the following in supplement to my August 14, 2006 declaration, docket number 134, filed in this case:¹

1. I am lead counsel for the defendant Deborah D. Foster a/k/a Debbie Foster. My co-counsel is Warren W. Henson, III.
2. The billing records for our legal services in the representation of defendant Deborah D. Foster are maintained at my law office.
3. Two accounts were created for the representation of defendant Deborah Foster in this case. The account information was redacted to exclude information protected by the attorney client privilege and attorney work product privilege.
4. Account number 249.00 reflects services rendered, costs, and expenses for the period of February 20, 2005 and continuing through October 27, 2006. ***Defendant's Exhibit 1***

¹My August 14, 2006 declaration filed herein is adopted *in totidem verbis* and supplemented with the instant declaration.

(Detailed work in progress report for account number 249.00 printed on 5-3-07).

- a. Account Number 249.00 reflects payments made by Deborah Foster posted during the period of March 8, 2005 through January 16, 2007, inclusive. ***Defendant's Exhibit 1, pg. 12.***
5. Account number 249.01 reflects services rendered, costs, and expenses for the period of November 6, 2006 and continuing through May 1, 2007. ***Defendant's Exhibit 2*** (Detailed work in progress report for account number 249.01 printed on 5-3-07).
 - a. No payments were posted to account number 249.01.
6. The activities on these accounts shows delayed compensation.
7. My hourly rate in December 2005 was \$200.00. My hourly rate was subsequently increased to \$225.00.
8. On February 19, 2005, Mr. Henson and I entered into a written contract with Deborah D. Foster to represent her in this case at a reduced hourly rate of \$175.00 because of Deborah Foster's limited financial ability to pay for her defense in this case.
 - a. At the time of the entry into the representation agreement with Deborah Foster, Deborah Foster was a party to a pending divorce case in Oklahoma wherein she was represented by separate counsel and was incurring fees and costs associated with legal services arising from the divorce proceeding.
 - b. A redacted copy of the representation agreement is attached hereto as ***Defendant's Exhibit 3***. The representation agreement is redacted to preserve privileges and

proprietary information including but not limited to attorney-client and work product privileges.

9. The time, cost, and expense records attached hereto were contemporaneously maintained by me during the defense of this case. Said records have also been edited to the extent necessary to assert the attorney client privilege and attorney work product privilege.
10. My current reasonable, customary billing rate is \$225.00 per hour.
 - a. This rate is consistent with the hourly rate for individuals of similar experience and expertise in this geographic community.
 - b. The reasonable, customary billing rate for paralegal/legal assistants in this geographic community is between \$80.00 and \$150.00 for persons who hold a four year degree or certification as a paralegal/legal assistant.
 - c. The reasonable, customary billing rate for the paralegal/legal assistant employed by me is \$100.00 per hour. This rate is consistent with the hourly rate for individuals of similar experience and expertise in this geographic community.
11. A compilation of costs and litigation expenses is included in the attached documents.
12. The costs and expenses sought under the Copyright Act are expenses which are normally billed by my office to clients.
13. My office maintains the digital litigation files for this case which includes all pleadings and orders entered in this case.
14. My office also maintains a paper pleading file of all pleadings and orders entered in this case.

15. The costs for, in house, photocopying charged to Deborah Foster was 20 cents or 25 cents per copy.
16. Incoming telecopier charges for printing of documents received by telecopier are \$1.50 per page.
17. The copy costs include 8 cents per page charged by FedExKinkos.
18. Pleadings and orders filed on the Court's ecf filing system in this case are printed, indexed to pleading files, and retained at my office.
 - a. At the time of the preparation of my declaration, my office has fourteen (14) pleading file folders for this litigation.
 - b. The paper files are utilized continuously throughout the litigation by me, my co-counsel and my legal assistant in tasks related to the case, including but not limited to the preparation of other subsequent pleadings.
 - c. The paper pleading file folders maintained by my office were also presented to Defendant's expert witness Richard B. Wilkinson for his review and consideration in the preparation of his declaration in August 2006 and subsequently presented to him for his review and consideration in preparation for his deposition in April 2007.
 - d. In light of my office practice of maintaining a paper file copy and the digital file copy of the pleadings and orders, no further duplication costs were incurred in presenting the pleadings and orders to Defendant's expert witness Richard B. Wilkinson.
 - e. The one time printing cost and file management for the stamped filed pleadings and

orders is \$1.50 per page.

19. The digital form of all pleadings and orders filed on the Court's ecf filing system in this case are also downloaded and to the litigation file for Deborah Foster maintained on the server at my office. My law office does not bill for the maintenance of the digital file.
20. Correspondence files for this case are also maintained. My office file has three file folders of paper correspondence exclusive of email communications in digital format.
21. The lodestar calculation for this case as shown by the work in progress statement for accounts 249.00-249.01 is as follows:
 - a. The total number of hours for lead counsel Marilyn Barringer-Thomson is 426.25 [hours] at \$225.00 per hour equals \$95,906.26.
 - b. The total number of hours for co-counsel Warren W. Henson, III is 39.90 at \$175.00 per hour equals \$6,982.50.
 - c. The total number of hours for lead counsel's legal assistant is 34.90 hours at \$80.00 per hour equals \$2,792.00.
22. The work in progress statements also reflect the costs and expenses incurred in the defense of Debbie Foster. The costs and expenses incurred are all of the nature that they would be separately billed as a common practice in this geographic area.
23. On information and believe of the undersigned, the typical hourly rate for an attorney with similar experience dealing with federal litigation such as this case is now in the range of \$175.00 to \$300.00 per hour.

24. In defense of Debbie Foster under the provisions of the Copyright Act, counsel relied upon recovery of costs and attorneys' fees to the prevailing party pursuant to 17 U.S.C. § 505.
 - a. The vindication of defendant's rights and of her right of access to the courts is an important element of her defense.
 - b. A full fee award is important to ensure that an adequate pool of attorneys exist to ensure that a defendant of limited means such as Debbie Foster can obtain counsel.
25. Matters such as this always displace other work available to counsel.
26. Under the circumstances herein, I believe I am entitled to compensation at an hourly rate of \$225.00 for all time expended in this matter.
27. The accounting documents will be further supplemented time and costs expended in the continued defense of Debbie Foster.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of May, 2007.

S/Marilyn D. Barringer-Thomson
Marilyn D. Barringer-Thomson, OBA 11057