

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

PATRICIA CHAMBERS, on her own behalf and  
As next friend on behalf of the minor child  
S.W.

PLAINTIFF

v.

CIVIL NO. 1:19-CV-093-GHD-DAS

STEPHANIE GREEN-STUBBS and  
STEFANY'S VOCAL & PERFORMANCE TRAINING STUDIOS LLC,

DEFENDANTS

**MEMORANDUM OPINION ON DAMAGES**

This matter arises from a Complaint filed by the Plaintiff in which she alleged against the Defendants a claim for copyright infringement and sought from the Court a declaratory judgment of fraudulent copyright registration [1]. The Defendant failed to respond to the Plaintiff's Complaint, and the Plaintiff filed a Motion for Default Judgment [13]. The Court now rules on the subject of damages. For the reasons discussed herein, the Plaintiff's request for an award of damages and attorney's fees [1] is DENIED and the Plaintiff's request for injunctive relief [1] is GRANTED.

**I. Procedural Posture**

On May 13, 2019, the Plaintiff filed her Complaint against the Defendants alleging a claim for copyright infringement and seeking from the Court a declaratory judgment of fraudulent copyright registration [1]. Defendant Stephanie Green-Stubbs, acting in a pro se capacity and identifying herself as Stephanie Denise Stubbs, filed a Motion for Additional Time on July 31, 2019, on her own behalf and on behalf of Defendant Stefany's Vocal & Performance Training Studios, LLC [7]. The Plaintiff opposed the motion [8]. The Court granted the Defendant's

motion, giving her an additional fourteen days to file her answer to the Plaintiff's Complaint and giving Defendant Stefany's Vocal & Performance Training Studios, LLC, another twenty-eight days to file an answer through a licensed attorney [9]. Defendant Green-Stubbs filed a notice of change of pro se address with the Court on September 23, 2019 [10]. The Defendants failed to file an answer to the Plaintiff's Complaint, or provide any explanation for this failure to answer.

On October 23, 2019, the Plaintiff filed a Motion for Entry of Default [11], and the clerk entered a Default against the Defendants on October 24, 2019 [12]. On February 21, the Plaintiff filed a Motion for Default Judgment [13], along with a corresponding Memorandum in Support of Plaintiff's Motion for Default Judgment [14]. The Court granted the Plaintiff's Motion for Default Judgment on March 11, 2020 [15]. After being rescheduled twice due to the COVID-19 pandemic [16; 17; 18; 19; 20; 21], a hearing on damages was held on September 17, 2020 [22; 24; 25].

## II. Factual Background

The Plaintiff alleged the following facts in her Complaint and in her Memorandum in Support of Plaintiff's Motion for Default Judgment [1; 14]. Since this Court granted the Plaintiff's Motion for Default Judgment [15], her well-plead allegations are taken as admitted. *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *CENTRIA v. Alply Architectural Bldg. Sys., LLC*, No. 4:11-CV-79-CWR-LRA, 2012 WL 73235, at \*4 (S.D. Miss. Jan. 10, 2012) (citation omitted).

At some point prior to this lawsuit, the Plaintiff, a songwriter, adopted her granddaughter S.W. after the death of her parents [1, ¶ 4]. In October 2016, the Plaintiff hired Defendant Green-Stubbs as S.W.'s vocal coach [1, ¶ 5]. On or about February 24, 2017, the Plaintiff and thirteen-year-old S.W. created the melody and lyrics for their song "Shake Rag," and the Plaintiff had the

lyrics notarized at Farmers and Merchant's Bank in Mooreville, Mississippi, as was her habit as a songwriter [14, at 3; 1-2]. The Plaintiff then approached Defendant Green-Stubbs about teaching S.W. to sing "Shake Rag" [14, at 3]. Shortly thereafter, the Defendant publicly acknowledged on social media that the Plaintiff and S.W. created the song [*Id.*; 1-3].

On April 11, 2017, S.W. and Defendant Stubbs-Green recorded the vocals for the song together after the Defendant claimed that S.W. was too inexperienced to perform alone [1, ¶¶ 9-10]. At the recording studio, four musicians wrote sheet music based on S.W.'s melody, and used this sheet music to accompany the singers S.W. and Defendant Green-Stubbs [14, at 2]. At the end of the session, the studio gave the recording, saved on a USB drive, to Defendant Green-Stubbs, who also took the sheet music created by the four musicians [*Id.*]. The Plaintiff and the Defendant split the costs of the recording studio session and the payment to the musicians that accompanied the singers [1, at ¶ 9].

On April 19, 2017, Defendant Green-Stubbs fraudulently applied for registration of the song "Shake Rag" with the U.S. Copyright Office [14, at 3]. She listed herself as the sole owner of the song, as well as the only creator of its music, lyrics, and vocals [*Id.*]. The U.S. Copyright Office granted a copyright registration, Registration No. SRu001299941, to Defendant Green-Stubbs for the song, which she titled "Shake Rag... Not Forgotten!" [*Id.*]. In May 2017, the Plaintiff discovered that the Defendant was claiming ownership of the song "Shake Rag," and then formally terminated the Defendant from her position as S.W.'s vocal coach [1, ¶ 12]. In June 2017, S.W. recorded another version of the song, this time without the Defendant's vocals and with new music created by youth pastor Patrick Devaughn [*Id.* at ¶ 13]. The Plaintiff and S.W. uploaded the new version of the song to Soundclick, an online music-sharing platform [*Id.*]. The

song became Soundclick's number-one song in the Rockabilly and Country Music category, and held that ranking for over two months [*Id.*].

Defendant Green-Stubbs then filed a Digital Millennium Copyright Act (DMCA) takedown notice with Soundclick against S.W., which caused the removal of S.W.'s song from Soundclick's website [*Id.*]. The Defendant also filed a DMCA takedown notice with YouTube.com against S.W. [14, at 4]. Defendant Green-Stubbs publicly performed "Shake Rag" several times, beginning with the 2017 Tupelo Elvis Festival, and claimed the song as her own at these performances [1, ¶14]. On August 6, 2017, the Defendant began selling the April recording of the song, which featured S.W.'s vocals, on iTunes, Amazon Music, and other digital music outlets [*Id.*]. In September of that year, the song was featured in a film about Elvis Presley titled "A Boy from Tupelo" and produced by Blue Magnolia Films [*Id.*]. The film credits Defendant Green-Stubbs as the composer of the song [*Id.*]. It also contains footage of Defendant Green-Stubbs singing the song and dancing with a group of children [1, ¶ 15]. The film has been distributed to elementary schools in Mississippi [*Id.*]. The Defendant continues to distribute the song [14, at 3].

The Plaintiff and S.W. received two copyright registrations in this case. The first, which covers the words to the song "Shake Rag," has an effective date of registration of October 31, 2017 [13-2]. The second copyright registration, which covers the sound recording, lyrics, and music for the song, has a date of first publication of August 6, 2017, and an effective date of registration of June 4, 2018 [1, ¶ 16; 1-4; 13-3]. On April 9, 2019, the Plaintiff and S.W. sent a letter to Defendant Green-Stubbs demanding that she cancel her copyright registration for "Shake Rag" and cease and desist the use of the song [1, ¶ 17; 1-5].

### III. Legal Standards

As noted above, this Court has already granted a Motion for Default Judgment in this case in favor of the Plaintiff [15], and so the remaining issues are the amount of damages and attorney's fees for which the Defendants are liable, as discussed in the Motion for Default Judgment, and the request for injunctive relief and a declaratory judgment of fraudulent copyright registration, as discussed in the complaint. During a separate hearing on the subject of damages, the Plaintiff is permitted to present evidence on the claims themselves as well as evidence pertaining to the amount of damages that she has allegedly suffered at the hands of the Defendants. *See* Fed. R. Civ. P. 55(b)(2).

#### A. Damages

A copyright infringer is liable for either (1) actual damages suffered by the copyright holder as a result of the infringement and any of the infringer's additional profits that are attributable to the infringement and not taken into account in computing the actual damages or (2) statutory damages. 17 U.S.C. § 504(a-b). Statutory damages equate to a sum of not less than \$ 750 nor more than \$30,000, as the court deems just, for each work for which the infringer is liable. 17 U.S.C. § 504(c)(1). When the court finds that infringement was committed willfully, the court in its discretion may increase the amount of statutory damages to a sum no greater than \$150,000. 17 U.S.C. § 504(c)(2). Conversely, when the court finds that the infringer was not aware and had no reason to believe that their acts constituted a copyright infringement, the court in its discretion may reduce the amount of statutory damages to a sum no less than \$200. *Id.*

However, as a general rule, no award of statutory damages or attorney's fees shall be made for "(1) any infringement of copyright in an unpublished work commenced before the effective

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