

LA ENERGIA NORTENA, LLC,	§	IN THE DISTRICT COURT
ADRIAN ZAMARRIPA, and	§	
HUMBERTO NOVOA	§	
	§	
VS.	§	192 st JUDICIAL DISTRICT
	§	
MOISES CUEVAS, JR.	§	DALLAS COUNTY, TEXAS

**ORDER ON
DEFENDANT MOISES CUEVAS, JR.'S 91a MOTION TO DISMISS
PLAINTIFFS' CLAIM FOR DECLARTORY RELIEF**

The Court having considered Defendant Moises Cuevas, Jr.'s Original Rule 91a Motion to Dismiss Plaintiffs' Claim for Declaratory Relief, the Plaintiffs' Original Response to said Motion, and Defendant's Original Reply in Support of such motion that was originally heard by submission on March 14, 2022, the Court **GRANTS** Defendant Moises Cuevas, Jr.'s Motion to Dismiss Plaintiffs' Claim for Declaratory Relief.

The Court **FINDS** that in paragraph 22 of Plaintiff's First Amended Petition, Plaintiffs have first pled an open-end claim for declaratory relief concerning certain copyright rights in dispute (including but not limited to ownership), by pleading the following:

22. Plaintiffs brings this action for declaratory judgment pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code because a real and justifiable controversy exists between Plaintiffs and Defendant regarding the matters described above, including ask this Court to determine and declare the copyrights interest in the albums. Accordingly, Plaintiffs request the Court adjudicate and declare the rights and interest of the parties' pursuant to the Declaratory Judgments Act, including, but not limited to:

- (i) declaring that all rights to copyrights in the ten albums belongs solely with Azteca Records; and
- (ii) ordering Defendant to cease any attempt to seek copyright or other legal protection for any album produced by Azteca Record for the band, La Energia Norteña.

The Court **FINDS** that 17 U.S.C. § 106 codifies the exclusive rights granted to an owner of a copyright.

The Court **FINDS** that pursuant to 17 U.S.C. § 201, the ownership in a copyright initially vests in the author(s).

The Court **FINDS** that pursuant to 17 U.S.C. § 204, the grant or transfer of an interest in a copyright can only be conveyed in writing signed by the owner of the rights conveyed.

The Court **FINDS** that Plaintiffs have pled and alleged facts in Plaintiff's First Amended Petition that "...Azteca Records is the rightful owner of the album copyrights" and "Defendant Cuevas...ma[de] claims of ownership and authorship of the albums where he has no right to claim copyrights."

The Court **FINDS** that Plaintiffs did not plead or allege any necessary facts in Plaintiff's First Amended Petition that rely on the existence of a written contract or written agreement granting copyright ownership to enable this Court to rule solely on the issue of copyright ownership as a matter of state contract law.

Instead, the Court **FINDS** that copyright ownership claims grounded in disputes about authorship are considered to arise under the U.S. Copyright Act, and therefore pursuant to 28 U.S.C. § 1338(a), only a federal district court "...shall have original jurisdiction of any civil action arising under any Act of Congress relating to...copyrights."

Accordingly, the Court **FINDS** that it lacks subject matter jurisdiction to provide declaratory relief on the ownership of copyrights of the sound recordings in question because the authorship of such works is disputed.

The Court **ORDERS** that Plaintiffs' request for declaratory judgment on the copyright rights question (including but not limited to question of ownership of such copyrights) is dismissed

with prejudice.

The Court **FINDS** that Defendant Cuevas is entitled to reimbursement of his reasonable and necessary attorney's fees and costs, amounting to: _____.

The Court **ORDERS** that Plaintiffs' amend their petition to delete Plaintiffs' claim for declaratory judgment regarding the sound recording copyrights rights in question;

The Court **ORDERS** that Plaintiffs reimburse Defendant Cuevas for his reasonable and necessary attorneys fees and costs within five (5) days of this ORDER.

Signed on _____, 2022.

JUDGE PRESIDING

ENTRY REQUESTED BY:



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CERTIFICATE OF SERVICE

I do hereby certify that I have forwarded a true and correct copy of the above and foregoing pleading in this cause to all counsel of record for the represented parties as listed below on this July 26, 2022.

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