

CAUSE NO. DC-22-3103

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

**DEFENDANT MOISES CUEVAS, JR.'S REPLY
TO PLAINTIFF'S AMENDED RESPONSE TO
DEFENDANT'S RULE 91a AMENDED
MOTION TO DISMISS PLAINTIFFS' CLAIM FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant MOISES CUEVAS, JR. and files this reply to Plaintiffs' Amended Response to Defendants' Amended Motion to Dismiss Plaintiffs' claim for declaratory judgment and would respectfully show this Court as follows:

PRELIMINARY STATEMENT

After reviewing Plaintiff's Amended Response, Plaintiffs, apparently, misunderstand copyright law entirely, or they have no respect for the subject matter jurisdictional boundaries of federal and state courts and therefore wish to mislead this Court in their representations of the law.

While Defendant Cuevas provided a factual summary of the procedural history of the Plaintiffs' action before this Court and the Defendant's separate federal action on the copyrights in dispute in Defendant's 91a Motion and Amended 91a Motion to Dismiss, such factual recital was merely given to make the State Court fully aware of the circumstances surrounding the dispute as the Northern District of Texas is already deciding the federal question of who is the author and owner of the sound recordings in dispute. The factual recital given by Defendant Cuevas in his motion to dismiss was not an attempt to rewrite Plaintiffs' First Amended Petition or interfere with

the appropriate standard of review that requires this Court to merely look at Plaintiff's First Amended Petition when deciding whether to grant Defendant Cuevas' 91a motion as Plaintiffs erroneously allege.¹

This Court's decision to decide whether to grant Defendant Cuevas' 91a Motion to Dismiss must be "...based **solely** on the pleading of the cause of action [i.e., Plaintiff's First Amended Petition], together with any pleading exhibits permitted under Rule 59." TEX. R. CIV. PRO. 91a.6. For this very reason, Defendant, in his original reply to Plaintiffs' original response to Defendant's original 91a motion to dismiss, and in Defendant's Amended 91a Motion to Dismiss, specifically called the State Court's attention to the deficiencies in fact and law pled in Plaintiff's First Amended Petition that prevent this State Court from being able to provide the declaratory relief sought by Plaintiffs.

Rather than acknowledge the actual arguments made by Defendant Cuevas for the proposed dismissal of Plaintiffs' claim for declaratory relief in Plaintiffs' First Amended Petition, Plaintiffs, in their amended response, erroneously claim that "Defendant failed to review Plaintiffs' initial Rule 91a response and address the deficiencies pointed out by Plaintiffs to defendant's first 91a motion." *See* Pl.'s Am. Resp. to Def.'s 91a Am. Mot. to Dismiss at 6. Plaintiffs then go on to make numerous misrepresentations and misleading statements in fact and law in support of their amended response. Accordingly, Defendant Cuevas files this Reply to Plaintiff's Amended Motion to Dismiss to address the fallacies of Plaintiffs' Amended Response and to further support his 91a Motion to Dismiss Plaintiffs' Claim for Declaratory Relief.

¹ *See* Pl.'s Am. Resp. to Def.'s Am. 91a Mot. to Dismiss at 6.

1. The Copyright Ownership issue is not going away, but it can only be decided in Federal Court because it is grounded in a dispute of authorship.

In section II.A. of Defendants' Amended 91a Motion to Dismiss, Defendant explains, "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."²

Defendant then cites the Federal Court of Appeals Fifth Circuit's decision in *Goodman v. Lee*, 815 F.2d 1030, 1031 (5th Cir. 1987), which holds: "[A]n action 'arises under' the Copyright Act if and only if the complaint...asserts a claim requiring construction of the Act."³

In keeping with Rule 91a.6, Defendant then looks solely at facts and claim for declaratory relief as pled in Plaintiffs' First Amended Petition to determine whether Plaintiffs request for declaratory relief arises under the Copyright Act and the exclusive jurisdiction of the federal court.⁴

Next, Defendant Cuevas points out that the Plaintiffs specifically allege within their First Amended Petition that "...Azteca Records [LLC] 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."⁵

Thereafter, Defendant Cuevas, again, looked solely at Plaintiff's First Amended Petition, in accordance with Rule 91a.6, whereby Plaintiff make an **open-ended** declaratory relief claim for this State Court to "...adjudicate and declare the rights interest of the parties' pursuant to the Declaratory Judgments Act, *including, but not limited to*: (i) declaring that all rights to the copyrights in the ten albums belong solely with Azteca Records; and (ii) ordering Defendant to

² See Def.'s Am. 91a Mot. to Dismiss at 9.

³ *Id.* at 10.

⁴ *Id.*

⁵ *Id.* (quoting and citing Pl.s' First Am. Pet. at ¶¶ 16-17).

cease any attempt to seek copyrights or other legal protection from any album produced by Azteca Record for the band, La Energia Nortena.”⁶

As mentioned in Defendant’s Amended 91a Motion to Dismiss, “[o]n the face of Plaintiff’s First Amended Petition, Plaintiffs are attempting to have this State Court resolve all ‘rights and interests of the parties’ related to the copyright in dispute – and not just ownership rights, but also authorship of the works!”⁷

Defendant is not rewriting Plaintiffs’ First Amended Petition when Defendant identifies the deficiencies of the alleged facts and Plaintiff’s open-ended claim for declaratory relief that prevents this State Court from ruling on such claim based on a lack of subject matter jurisdiction.

Accordingly, and as explained in Defendant’s Amended 91a Motion to Dismiss, Federal Courts hold: “[C]laims premised upon *authorship* of a copyright work arise under the [Copyright] Act. In addition, *ownership claims grounded in disputes about authorship* are considered to arise under the Act.”⁸

Plaintiffs clearly within the four corners of their First Amended Petition raise contest to Defendant Cuevas’ claims of authorship and ownership of the copyrights in dispute, and Plaintiffs ask this State Court for a blanket adjudication to decide all of the rights and interests of the parties with regard to the copyrights in dispute.⁹ But the State Court **cannot** grant declaratory relief that is grounded in a dispute of authorship!

The State Court only has authority to decide copyright ownership, standing alone (when authorship is not disputed), because the transfer or grant of ownership of a copyright requires a

⁶ See *id.* at 10-11 (citing and quoting Pl.s’ First Am. Petition at ¶ 22).

⁷ See *id.* at 11.

⁸ See Def.’s Am. 91a Mot. to Dismiss at 12 (citing *Jones v. Glad Music Publ. ’g & Recording LP*, 535 F. Supp. 3d 723, 732 (M.D. Tenn. 2021)).

⁹ See Pl.’s First Am. Pet. at ¶¶ 14-16 & 22.

written instrument signed by the owner of the rights conveyed. *See* 17 U.S.C. §204(a); *See also Di Angelo Publs, Inc. v. Kelley*, 9 F.4th 256 (5th Cir. 2021) (“It is well established that where a party holds a copyright by virtue of an assignment or similar contractual arrangement, state law is determinative of ownership. But claims of copyright ownership grounded in authorship touch on federal concerns. **Section 201(a) of the Copyright Act provides that ‘[c]opyright in a work protected under this title vests initially in the author or authors of the work.’ ‘An author gains ‘exclusive rights’ in her work immediately upon the work’s creation, including rights of reproduction, distribution, and display,’ and thus registration is not a prerequisite to an author holding a copyright.**”).

Plaintiff’s First Amended Petition fails to plead any facts that explain how and why Azteca Records is the owner of the copyrights in dispute. Instead, Plaintiffs merely assert that Azteca Records is the owner, and Plaintiffs dispute that Cuevas has any right to make any claims of ownership and authorship of the sound recordings.¹⁰

But the factual allegations made in Plaintiff’s First Amended Petition clearly shows that **Plaintiffs have absolutely no idea how copyright law works.** To explain in Paragraph 15 of Plaintiff’s First Amended Petition, Plaintiffs allege:

15. In May 2021, Plaintiffs became aware that Defendant Cuevas registered all of the albums produced under Azteca Records under La Energia Norteña, the band. However, La Energia Norteña **does not have the right to copyright** such albums as those rights are solely within Azteca Publishing and Azteca Records.¹¹

Plaintiff’s allegation that someone does not have the “right to copyright” is evidence that Plaintiffs do not understand copyright law and how authorship and ownership applies to works of copyright. Under U.S. law and pursuant to 17 U.S.C. § 201, a copyright in a work exists at the

¹⁰ *See* Pl.’s First Am. Pet. ¶¶ 15-17.

¹¹ *See* Pl.’s First Am. Pet. ¶¶ 15 (emphasis added).

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