

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SONY BMG MUSIC)
ENTERTAINMENT, a Delaware)
general partnership; UMG)
RECORDINGS, INC., a Delaware)
corporation; VIRGIN RECORDS)
AMERICA, INC., a California)
corporation; LAFACE RECORDS LLC,)
a Delaware limited liability company;)
and WARNER BROS. RECORDS) CIVIL ACTION FILE
INC., a Delaware corporation,)
) No. 1:08-cv-03728-CC
)
Plaintiffs,)
)
)
v.)
)
)
LINDSEY SIMMS,)
)
)
Defendant.)
)
_____)

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO
FILE AN AMENDED ANSWER, AFFIRMATIVE DEFENSES AND
AMENDED COUNTERCLAIMS**

Plaintiffs respectfully submit this Response to Defendant's Motion for Leave to File an Amended Answer, Affirmative Defenses and Amended Counterclaims ("Motion to Amend") and request that the Court deny Defendant's Motion to Amend, or in the alternative, require Defendant to file a proposed Amended Answer, Affirmative Defenses and Counterclaim before considering Defendant's

Motion to Amend. In support of this request, Plaintiffs state as follows:

I. Defendant's Motion to Amend Should Be Denied Unless Defendant Submits a Proposed Amended Answer and Counterclaim.

While Rule 15(a)(2) provides that “leave to amend should be freely [granted] when justice so requires . . . [this] does not mean that leave will be granted in all cases.” *Whitley v Comcast of Georgia*, No. 3:05-cv-82, 2007 U.S. Dist. LEXIS 26071, at *3 (M.D. Ga. April 9, 2007) (citations omitted). “A district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile.” *Id.* (citing *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262 (11th Cir. 2004)). In this matter, Defendant has failed to establish that “justice so requires” that she be permitted to amend; therefore, Defendant has failed to satisfy her burden under Rule 15(a)(2). Moreover, based on the information provided in Defendant’s Motion to Amend, this Court should conclude that Defendant’s requested amendment would be futile.

Here, Defendant has failed to submit her proposed Amended Answer, Affirmative Defenses and Counterclaims.¹ She has also failed to provide any specifics as to how she intends to amend her answer, affirmative defenses, or the

¹ Defendant states in her Motion to Amend that the proposed First Amended Answer and Counterclaims was filed contemporaneously with the Motion to Amend. However, Plaintiffs did not receive a copy of the proposed First Amended Answer and Counterclaims and no such document has been filed with the Court.

counterclaim in her Motion to Amend.² Rather, Defendant merely states that she “has become aware of additional information relevant to her Affirmative Defenses [and Counterclaim].” (Def. Mot. ¶¶ 3-4.) The fact that Defendant has become aware of “additional information,” without specifically identifying how this new information warrants that Defendant be permitted to amend her answer, affirmative defenses and counterclaim, is not sufficient grounds to entitle Defendant leave to amend. Moreover, the lack of information provided by Defendant with regards to the requested amendment in her Motion to Amend fails to present any evidence that would indicate Defendant’s requested amendments would not be futile.

Accordingly, Plaintiffs request that Defendant’s Motion to Amend be denied because Defendant has failed to establish under Fed. R. Civ. P. 15(a)(2) that “justice so requires” she be granted leave to amend or that any amendment requested would not be futile. In the alternative, Plaintiffs request that Defendant be ordered to submit a proposed Amended Answer, Affirmative Defense and Counterclaim and that Plaintiffs be given the opportunity to then respond to Plaintiffs’ Motion to Amend and the proposed pleading.

² Because Defendant is appearing pro se, Plaintiffs counsel attempted to contact Defendant to request that she either file a proposed amended answer and counterclaim or, at a minimum, provide Plaintiffs with information regarding how she intended to amend her answer or her counterclaim. Defendant, however, has not responded to the message left by Plaintiffs’ counsel.

Respectfully submitted this the 12th day of March, 2009.

s/ Robert F. Glass

T. Joshua R. Archer

Georgia Bar No. 021208

M. Anne Kaufold-Wiggins

Georgia Bar No. 142239

Robert F. Glass

Georgia Bar No. 115504

BALCH & BINGHAM LLP

30 Ivan Allen, Jr. Boulevard, NW

Suite 700

Atlanta, GA 30308

Telephone: (404) 261-6020

Facsimile: (404) 261-3656

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 12, 2009, a copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS** was served upon the Defendant via United States Mail at the following address:

Lindsey Simms
2610 Sumpter Trail
Conyers, GA 30012

s/ Robert F. Glass

Robert F. Glass
Georgia Bar No. 115504

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1(C)

I hereby certify that the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS** has been prepared in a Times New Roman 14 point font, one of the font and point selections approved by the Court in Local Rule 5.1(C).

s/ Robert F. Glass

Robert F. Glass

Georgia Bar No. 115504