

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VIRGIE ARTHUR,
PLAINTIFF.

v.

HOWARD K. STERN,
CBS STUDIOS INC. and
KPRC HOUSTON,
DEFENDANTS.

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CIVIL ACTION NO.: 4:07-cv-03742

**DEFENDANTS’ CBS STUDIOS INC. AND KPRC HOUSTON’S SUPPLEMENTAL
RESPONSE TO PLAINTIFF’S AMENDED MOTION FOR LEAVE TO AMEND
ORIGINAL PETITION (COMPLAINT) TO ADD ADDITIONAL
PARTY DEFENDANTS AND JURISDICTIONAL FACTS**

Defendants CBS STUDIOS INC. and KPRC HOUSTON (“Defendants”) file this Supplemental Response to Plaintiff’s Amended Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts, and in support thereof would show the following:

I.

INTRODUCTION

1. On April 21, 2008, three days after the Court held a one-and-a-half-hour long hearing on Plaintiff’s Amended Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts (“Plaintiff’s Motion for Leave”) and on Plaintiff’s Motion to Remand, Plaintiff filed a lawsuit in Texas state court against all of the parties for whom she sought leave from this Court to add to her First Amended Complaint. (Pl.’s Orig. Pet. in *Arthur v. Stern et al.*; Cause No. 2008-24181, in the 190th Judicial District Court of Harris County, Texas, attached hereto as Exhibit “1”.) Defendants believe that event begs a

response. Indeed, Defendants respectfully request that in light of the filing of Plaintiff's new state court action, Plaintiff's Motion for Leave should be denied as moot.

II.

SUPPLEMENTAL RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE

3. In Plaintiff's Motion for Leave, she seeks to add Bonnie Stern, Art Harris, Nelda Turner, Harvey Levin and TMZ Productions, Inc. as party defendants to this case because such persons and entities "participated in the conspiracy to defame Plaintiff." (Pl.'s Am. Mot. for Leave p. 2, docket no. 48.) In Defendants' Response to the Plaintiff's Motion for Leave (docket no. 56), Defendants opposed Plaintiff's Motion for Leave on a variety of grounds – including arguing that Plaintiff's desire to add new parties was simply an effort to thwart federal court jurisdiction – and further argued at oral hearing on April 18, 2008 that nothing was preventing Plaintiff from pursuing claims against those five alleged co-conspirators in a separate action in state court.

4. On April 21, 2008, Plaintiff apparently agreed and filed a separate action in state court against those same five alleged co-conspirators and three others, *Arthur v. Stern et al.*; Cause No. 2008-24181, in the 190th Judicial District Court of Harris County, Texas. Plaintiff's state court petition and the First Amended Complaint she seeks leave to file in this Court are virtually identical. (*Compare* Exhibit 1 with Pl.'s First Am. Compl. (attached as Exhibit H to Plaintiff's Motion for Leave), attached hereto as Exhibit "2".) Indeed, the state court petition and the First Amended Complaint contain the same causes of action, many of the same factual allegations (large portions of the state court petition are copied verbatim from the First Amended Complaint), and six of the same parties. (*Compare* Ex. 1 with Ex. 2.) The only substantive

difference is that Plaintiff's state court petition includes two additional party defendants, Lyndal Harrington and Theresa Stephens, and does not include Defendants as party defendants. (*Id.*)

5. Plaintiff seeks leave to file her First Amended Complaint because "otherwise, co-conspirators will escape liability." (Pl.'s Am. Mem. in Support of Pl.'s Mot. for Leave p. 8, docket no. 49.) Now that Plaintiff has filed suit against those same alleged co-conspirators in state court (where she presumably will not allow the alleged co-conspirators to escape liability), Plaintiff's concern that the "co-conspirators will escape liability" is moot. Accordingly, Defendants respectfully request that, in addition to the other reasons suggested in Defendants' Response to Plaintiff's Motion for Leave (docket no. 56), the Court deny Plaintiff's Motion for Leave because it, likewise, is moot. *Buckley Towers Condominium, Inc. v. Buchwald*, 533 F.2d 934, 939 (5th Cir. 1976) (affirming trial court's denial of motion for leave to amend complaint to add parties as moot "in light of the commencement [by the plaintiffs] of a second action alleging substantially the same claims" against substantially the same parties); *Flintkote Co. v. Diener*, 185 F. Supp. 509, 510 (D.P.R. 1960) (denying leave to amend complaint to add parties because "the proposed amended complaint in identical form and with the same relief requested has been filed by plaintiff in a separate action").

6. Wherefore, Defendants CBS Studios Inc. and KPRC Houston respectfully request that the Court deny as moot Plaintiff's Amended Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts and for such other and further relief, at law or in equity, to which they may justly be entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Nancy W. Hamilton

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**ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

This is to certify that on this 24th day of April, 2008, a true and correct copy of the foregoing document was served by electronic notification to all parties of record through the e-filing website of the Southern District, and by certified mail, return receipt requested upon:

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