

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 SUR-REPLY
TO:**

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

AND

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S REPLY TO
DEFENDANTS' RESPONSE TO PLAINTIFF'S AMENDED MOTION FOR LEAVE TO
AMEND ORIGINAL PETITION (COMPLAINT)**

AND

**AMENDED PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S
RESPONSE TO RULE 12(B)(2) MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION AND IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS'
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 Sur-Reply to Plaintiff's Reply to Defendant CBS Studios Inc.'s and KPRC Houston's Supplemental Response to Plaintiff's Amended Motion for Leave to Amend Original Petition (Complaint) and to Add Additional Party Defendants and Jurisdictional Facts (hereafter "Doc. #75"), Plaintiff's

Memorandum in Support of Plaintiff's Reply to Defendants' Response to Plaintiff's Amended Motion for Leave to Amend Original Petition (Complaint) (hereafter "Doc. #76"), and Amended Plaintiff's Memorandum in Support of Plaintiff's Response to Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction and in Support of Plaintiff's Reply to Defendants' Response to Plaintiff's Amended Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts (hereafter "Doc. #78"), and in support thereof would show the following:

I.

Plaintiff's continued reliance on Fed. R. Civ. P. Rule 15(a)(2), as procedural basis for permitting her to add parties and jurisdictional facts (Doc. #76 at page 34), is misplaced. "A party may not employ Rule 15(a) to interpose an amendment that would deprive the district court of jurisdiction over a removed action." *Whitworth v. TNT Bestway Transportation Inc.*, 914 F.Supp. 1434, 1435 (E.D. Tex.) citing 6 Wright, Miller & Kane, Federal Practice & Procedure: Civil, § 1447 at 562 (2d ed. 1990). In *Whitworth*, the district court held, "When an amendment would destroy jurisdiction, most authorities agree that leave should be denied unless there exist strong equities in its favor. In the case at bar, the putative reason the plaintiff failed to add the [non-diverse defendant] earlier did not resonate with this Court. Instead, it is more likely that the decision to add the non-diverse party was deliberately delayed until after the case had been assigned to a particular court in the Eastern District. In any event, the balance of interests in this case does not favor allowing the plaintiff's amended complaint." *Id.*

Here, the equities continue to strongly favor denial of Plaintiff's motion for leave to amend to add non-diverse parties in spite of her relentless filing of documents that purportedly represent emails and internet chat room conversations involving the new defendants. First, equity favors and the mootness doctrine requires denial of the motion since Plaintiff has filed a

state court case asserting all the same claims she proposes in her amended complaint. *See* Exhibit 1 to Defendants CBS Studios Inc. and KPRC Houston's Supplemental Response (Doc. #74). The mere fact that Plaintiff filed in state court because the statute of limitations ran on April 19, 2008 for one of the publications (Doc. #75 at ¶ 2), does not weigh in favor of permitting her to amend her complaint in this Court.

Second, the plethora of documents Plaintiff has dumped into the record since the hearing on April 18, 2008 does not change the fact that the new parties, and Nelda Rose Turner in particular, did not have anything to do with the alleged defamatory broadcast of statements made by Anna Nicole Smith on Entertainment Tonight in November 2006 or February 2007 (the "Broadcast"), which form the basis of Plaintiff's original complaint. A review of Doc. #76 and the attached documents reveals nothing insofar as the Broadcast itself is concerned. There is nothing in proposed amendments or Doc. #76 or any of the other documents Plaintiff has filed in this case that even appear to connect the proposed non-diverse defendant, Nelda Rose Turner, to CBS Studio Inc., KPRC Houston and the Entertainment Tonight Broadcast. Furthermore, there is no indication from the documents that Defendant Stern communicated or conspired with Turner regarding the Entertainment Tonight Broadcast or any other defamatory statement for that matter. Accordingly, amendment of the complaint to add unrelated alleged defamations about Plaintiff's incestuous relationships with her step brother and her cousin with the Entertainment Tonight Broadcast will unnecessarily complicate and confuse the issues in the case for both the court and the jury, to the prejudice of these Defendants. Thus, the equities strongly weigh against the amendment which would destroy diversity jurisdiction, and the motion for leave should be denied. *See e.g. Hensgens v. Deere & Co.*, 833 F.2d 1179, 1182 (5th 1987).

Respectfully submitted,

JACKSON WALKER L.L.P.

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ATTORNEYS FOR DEFENDANTS

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CERTIFICATE OF SERVICE

This is to certify that on this 6th day of May, 2008, a true and correct copy of the foregoing document was served by electronic notification to parties of record through the e-filing website of the Southern District, and/or by certified mail, return receipt requested and/or facsimile upon:

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