

ORIGINAL

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ APR 11 2019 ★

TAJE MONBO, *et al.* )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 LOTFY NATHAN, *et al.* )  
 )  
 Defendants, )  
 )

Civil Action No.: CV-18-5930

BROOKLYN OFFICE

Assigned Judge: Margo K. Brodie

Magistrate Judge: Steven L. Tiscione

Honorable Margo K. Brodie  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**MONBO'S RESPONSE TO DOCUMENT 53**

Dear Judge Brodie,

Taje Monbo and Deafueh Monbo ("Monbo") submit their response to Oscilloscope Pictures' letter (Dkt 53) and state as follows:

**PROCEDURAL HISTORY**

**Overbrook Entertainment LLC, Overbrook Entertainment Inc, Will Smith, and Sony Pictures Entertainment, Inc (hereinafter "Overbrook & Sony")**

1. On October 23, 2018, Monbo filed their complaint against Defendants alleging thirteen cause of actions including copyright infringement and trademark infringement. (*See* Dkt 1)
2. Overbrook & Sony requested two 30-day extensions which led to no proposal for resolution of the matter. (*See* Dkt 17-18).
3. On March 18, 2019, Overbrook & Sony requested a pre-motion conference regarding their proposed Motion to Dismiss. The Court ordered Overbrook & Sony to confer with Monbo's attorney to submit a proposed briefing schedule.
4. An effective counsel, after being on the case for five months<sup>1</sup>, would have amended the *Pro Se* complaint pursuant to Rule 15, instead of entertaining opposing counsel's Motion to Dismiss for defects in pleading.

<sup>1</sup> Former attorneys, Joseph [REDACTED] and Luiz [REDACTED] were hired on October 31, 2018.

5. On April 3, 2019, Monbo terminated the services of their attorney [REDACTED]

6. According to Federal Rules, an attorney's withdrawal is mandatory for any of these reasons:

- the client terminates the attorney's services
- [REDACTED]
- the attorney has a conflict of interest

7. Monbo asked the Court for leave to amend their complaint and to find a new attorney. (See Dkt 52 and 57)

8. Monbo's proposed amended complaint will add specificity to its allegations so that the Defendants are more aware of the circumstances giving rise to the action. Monbo's complaint will also identify specific copyright and trademark infringement claims related to Overbrook & Sony's 12 O'Clock Boys (2019).

9. Monbo's amended complaint will also request, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, a judicial determination of Monbo's rights, and a declaration that Overbrook & Sony's *past, current, and continued* production of 12 O'Clock Boys (2019) constitutes infringement of the Monbo's 12 O'Clock Boyz Copyrighted Works.

10. Overbrook & Sony's Motion to Dismiss is rendered moot.

**Oscilloscope Inc, Oscilloscope Pictures Inc, Daniel Berger, and Thomas Sladek  
(hereinafter "Oscilloscope Laboratories")**

11. On March 4, 2019, Oscilloscope Laboratories filed their Answers to Monbo's complaint. (See Dkt 34, 35, 38 and 39)

12. Oscilloscope Laboratories did not plead any counterclaims because Oscilloscope Laboratories does not have any meritorious counterclaims against Monbo.

13. Oscilloscope Laboratories submitted a letter to the Court on April 4, 2019, requesting consolidation, amongst other objectionable requests. (See Dkt 53).

## STANDARDS OF REVIEW

### I. CONSOLIDATION WILL PREJUDICE MONBO

Monbo objects to the consolidation of this Case No: CV-18-5930 with Case No: 17-CV 7458 because the consolidation will prejudice Monbo.

## II. COMPULSORY COUNTERCLAIM RULE

On March 4, 2019, Oscilloscope Laboratories filed their Answers to Monbo's complaint but did not plead any counterclaims, **therefore Oscilloscope Laboratories counterclaims are deemed waived under Rule 13(a).**

## III. MOTION TO DISMISS AND WAIVER UNDER RULE 12

On March 4, 2019, Oscilloscope Laboratories filed their Answers to Monbo's complaint but did not raise the defenses under Rule 12 in its Answer, **therefore Oscilloscope Laboratories waived its right to file a Motion to Dismiss under Rule 12.**

Oscilloscope cannot join Overbrook & Sony's Motion to Dismiss. Furthermore, Overbrook & Sony's Motion to Dismiss is rendered moot due to Monbo's letter motion for leave to amend complaint.

## IV. LEAVE TO AMEND

Rule 15 provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

Monbo intends to file an amended complaint within the time permitted by the Court as set by the Schedule Order. Oscilloscope's permission is not required since Monbo has already filed a letter motion seeking leave from the Court to amend their complaint. (*See* Dkt 52)

Respectfully Submitted,

[REDACTED]

[REDACTED]

Dated: April 10, 2019

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this MONBO'S RESPONSE TO DOCUMENT 53 was mailed April 10, 2019 to:

Robert S. Meloni,  
Thomas P. McCaffrey  
Meloni & Mccaffrey, P.C.  
3 Columbus Circle – 15th Floor  
New York, New York, 10019  
Tel: (212) 520-6090

*Attorney for Plaintiff Oscilloscope Pictures, Inc.*

Joel W. Sternman  
Joel Weiner  
KATTEN MUCHIN ROSENMAN LLP  
575 Madison Avenue  
New York, NY 10022-2585

*Attorneys for Defendants Sony Picture Entertainment, Inc.  
Overbrook Entertainment, Inc., Overbrook  
Entertainment LLC, and Will Smith*