

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

CAPITOL RECORDS, INC., et al.,

Case No.: 06-cv-1497-MJD-RLE

Plaintiffs,

JUDGE: Michael J. Davis

vs.

MAGISTRATE: Raymond L. Erickson

Jammie Thomas,

Defendant.

**PLAINTIFFS' MOTION FOR
LEAVE TO FILE SURREPLY RE
DEFENDANT'S MOTION FOR NEW
TRIAL, OR IN THE ALTERNATIVE,
FOR REMITTITUR**

Plaintiffs respectfully submit this motion for leave to file a Surreply to correct misstatements contained in Defendant's Reply to Plaintiffs' Response In Opposition to Defendant's Motion For New Trial, Or In The Alternative, For Remittitur. As grounds therefor, Plaintiffs state as follows:

ARGUMENT

In her Reply (Doc. No. 128), Defendant makes the following statements:

1. "At trial, none of plaintiffs' witnesses identified which of the 1702 other song recordings were subject to copyrights held or controlled by plaintiffs." (Reply at 2.)
2. The holding in *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998), that a jury must decide issues of statutory damages under the Copyright Act "only applies if we accept that the damages assessed are not punitive in nature." (Reply at 7-8.)
3. That Plaintiffs incurred actual damages of "approximately \$.70." (Reply at 9.)

All three of these statements are inaccurate, and Plaintiffs respectfully submit that they should be allowed to correct the record on these issues. A copy of Plaintiffs' proposed surreply is being filed contemporaneously with this motion for leave.

Counsel for Plaintiffs has conferred with counsel for Defendant regarding this motion and advises the Court that Defendant opposes the motion.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request leave to file a Surreply to correct misstatements contained in Defendant's Reply to Plaintiffs' Response In Opposition to Defendant's Motion For New Trial, Or In The Alternative, For Remittitur, and ask that the Court accept Plaintiffs' Surreply for filing.

A form of order is attached for the Court's convenience.

Respectfully submitted this 6th day of December 2007.

s/ Leita Walker

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