

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-00886

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Malibu Media, LLC,  
Plaintiff,

v.

Jeff Fantalis, Bruce Dunn, and  
Stephen Deus,  
Defendants.

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**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 16 2012

GREGORY C. LANGHAM  
CLERK

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RESPONSE TO PLAINTIFF'S MOTION  
TO DISMISS DEFENDANT'S COUNTERCLAIM

Defendant, Jeff Fantalis, by way of response to Plaintiff, Malibu Media LLC's motion pursuant to Fed. R. Civ. P. 12(b)(6) says:

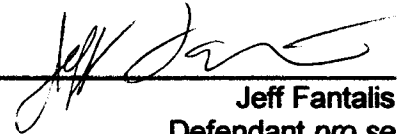
1. Today, July 13, 2012, I have filed an Amended Answer and Counterclaim with the Clerk of this Court. A copy of the filing letter is attached hereto as Exhibit A.
2. This Amended Answer and Counterclaim is filed pursuant to Fed. R. Civ. P. 15(a)(1) which provides in relevant part: "A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier."
3. As Plaintiff filed a Motion to Dismiss pursuant to Rule 12(b)(6) on June 25, 2012, Defendant is within the 21 days provided by Rule 15(a)(1)(B).

4. The Plaintiff's Motion to Dismiss pursuant to Rule 12(b)(6) is rendered moot by the filing of this Amended Answer and Counterclaim. The factual issues raised by Plaintiff in its Motion have been addressed and Plaintiff's arguments do not apply to the Amended Answer and Counterclaim. It is respectfully submitted that no purpose would be served, and that on the contrary, needless judicial time and resources would be spent if Plaintiff were to insist upon a decision on this Motion. Accordingly, it is respectfully requested that the Court enter an order dismissing Plaintiff's motion as moot.

**WHEREFORE**, Defendant respectfully requests that this Court enter an Order,

- (A) Dismissing Plaintiff's Motion to Dismiss Defendant's Counterclaim as moot; and
- (B) Denying Plaintiff's request for sanctions; and
- (C) For such other and further relief as the Court may deem equitable and just.

Respectfully submitted,



Jeff Fantalis  
Defendant *pro se*  
818 Trail Ridge Drive  
Louisville CO 80027  
(303) 482-1211

Dated: July 13, 2012