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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 1:07-cv-11673-MLW

WILLIAM V. AGUIAR, III,
Plaintiff

vs.

FLOYD WEBB, et al,
Defendants

For Hearing Before:
Chief Judge Mark L. Wolf

Motion Session

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
May 9, 2008

REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
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A P P E A R A N C E S

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For Floyd Webb

1 P R O C E E D I N G S

2 (Begins, 11:30 a.m.)

3 THE CLERK: Civil Action 07-11673, William
4 Aguiar versus Floyd Webb. The Court is in session. You
5 may be seated.

6 THE COURT: Good morning. Would counsel
7 please identify themselves for the record.

8 MR. ROFFMAN: Good morning, your Honor. I'm
9 Ian Roffman with Heather Repicky, we're from Nutter
10 McClennen & Fish, and we're appearing on behalf of the
11 plaintiff, William Aguiar. We filed an appearance in
12 this case probably about 45 minutes ago or so.

13 THE COURT: I have it.

14 MR. KLUFTH: Your Honor, David Klufth for
15 defendant, Floyd Webb, and with me is Walead Esmail.

16 THE COURT: All right. Mr. Roffman and Miss
17 Repicky each appeared today. Is Mr. Aguiar present?

18 MR. ROFFMAN: Your Honor, yes, he is. He's
19 right over here.

20 THE COURT: And who is with him?

21 MR. ROFFMAN: A family friend by the name of
22 Ray.

23 THE COURT: Ray what?

24 MR. ROFFMAN: I can't pronounce his last name.

25 MR. AGUIAR: Your Honor, Ray Karnasiewicz.

1 THE COURT: Would you spell that.

2 MR. KARNASIEWICZ: K-A-R-N-A-S-I-E-W-I-C-Z.

3 THE COURT: Okay. Well, you may be seated.

4 On several occasions prior to today, Mr. Roffman,
5 as you probably know, I ordered Mr. Aguiar to let me
6 know whether he would be represented by counsel or
7 proceed Pro Se and I gather it's only very recently that
8 he obtained your services. I do think this case, or
9 whatever of it survives today's proceedings, would
10 benefit from Mr. Aguiar being represented by counsel. I
11 wonder if you have any familiarity, though, with the
12 criminal law and particularly the appropriate scope of
13 the assertion of Fifth Amendment rights, because I'm
14 going to be discussing that momentarily.

15 MR. ROFFMAN: Your Honor, I do have some
16 familiarity with the Fifth Amendment, yes. I am not a
17 criminal lawyer by training. And as you point out --
18 and it's not to bring up an aside, Ms. Repicky and I
19 were brought into this case based on a referral from a
20 group called "Volunteer Lawyers for the Arts," which has
21 an interest in copyright protection, your Honor, and
22 we've come into this case just in a matter of days. And
23 so we're not fully up to speed on everything that's
24 happened both procedurally and substantively to date.
25 And one of the things I would ask your Honor -- and I

1 don't mean to preempt your Honor's agenda, is that we at
2 least be given a short period of time to come up to
3 speed and to speak with defense counsel. Perhaps we can
4 have some sort of agreement in terms of a process for
5 going forward.

6 THE COURT: Well, we'll see because I've had
7 many hearings in this case. But you can have a seat.
8 That's not where we're going right now. You can have a
9 seat.

10 MR. ROFFMAN: Okay.

11 THE COURT: This is a civil case and I've, of
12 course, read the defendant's motion for a default
13 judgment and other sanctions. It suggests to me that
14 there may be evidence of crimes committed by Mr. Aguiar
15 and others -- "Ray" is mentioned in the communications
16 that caused me to have the question. And I feel an
17 obligation to describe the issue because it's possible
18 that things that Mr. Aguiar might say or some of his
19 colleagues might say could conceivably prove to be
20 information that Mr. Aguiar or they have a Fifth
21 Amendment right not to provide.

22 Mr. Roffman, I assume you've read the defendant's
23 motion. It includes some statements placed on the
24 Internet, I believe, by somebody named John Creeden that
25 refers to "Ray." Have you read that?

1 MR. ROFFMAN: I've seen that, yes, your Honor.

2 THE COURT: And 18 United States Code, Section
3 241, a provision of the criminal code, prohibits a
4 conspiracy to violate a person's rights under the
5 Constitution of the United States, and I would
6 confidently expect including your right to access to the
7 courts. It's a crime, a Federal crime punishable by up
8 to 10 years in prison and a fine of \$10,000 to threaten
9 somebody for their participation in a lawsuit in Federal
10 court. And some of the statements included in the --
11 with the defendant's motion, attributed to Mr. Creeden,
12 and in the defendant's submissions linked to Mr. Aguiar,
13 the mentioning, I think, "The allegedly dangerous Ray,"
14 could be evidence of a violation of that statute. It's
15 also possible that 18 United States Code, Section
16 245(b)(1) is implicated.

17 And so I handle civil cases and I handle criminal
18 cases and this is a civil case, but if the parties'
19 conduct in this case appears to me to violate the
20 Federal criminal law, it's my duty, and on the rare
21 occasions when it occurs, my practice to refer the
22 matter to the United States Attorney's Office. So I
23 really feel an obligation to explain that. And some of
24 the points raised by the defendant, which I intend to
25 address today, at least hear argument on today, could

1 implicate Mr. Aguiar's Fifth Amendment rights. So I
2 wanted to let you know that.

3 MR. ROFFMAN: Thank you, your Honor.

4 THE COURT: Then you are -- well, let me ask
5 the following and not presume that I know the answer.
6 Does Mr. -- and Mr. Roffman, understandably, and I'd say
7 foreseeably asked for some time to talk to counsel and I
8 do continue to think that this case might benefit
9 considerably from Mr. Aguiar being represented, but does
10 the defendant want me to provide a short number of days
11 for counsel for both parties to confer or do you want to
12 go ahead now on your motion for default judgment and
13 dismissal?

14 MR. KLUFIT: Your Honor, we do want to go ahead
15 now on our motion for default judgment and dismissal.
16 We're thrilled to have counsel involved, going forward,
17 on behalf of Mr. Aguiar, but we are where we are and we
18 feel, because of Mr. Aguiar's choices and because of the
19 harm being caused to Mr. Webb, that it's an appropriate
20 time to proceed on the motion. We will certainly confer
21 with him anyway about where we are after today's
22 hearing.

23 THE COURT: Well, I'm going to at least hear
24 you and, to the best of his ability, Mr. Roffman on
25 this. It may -- I mean, I'll say the following. The

1 defendant's motion, while setting forth certain factual
2 matters and citing some rules and cases, doesn't, from
3 my perspective, cite the most relevant provisions of the
4 Federal Rules of Civil Procedure, which are Rule 16(f)
5 and Rules 37(b)(2), (b), (c), and (D). Rule 16(f)
6 provides for sanctions that are just for violation of
7 pretrial orders, and among those sanctions are those
8 enumerated in Rule 37(b)(2), (B), (C), and (D).

9 Although those are not the exclusive possible
10 sanctions. Others might be just in the circumstances.

11 In addition, Rule 16(f) requires, in most
12 circumstances, the payment of a party who's violated
13 pretrial orders of the reasonable attorneys fees and
14 costs, although that would be excused if there was
15 substantial justification or if there was some other
16 reason it wasn't just to require that, but that's a
17 sanction expressly provided by Rule 16(f), in addition
18 to or in lieu of other sanctions. So now --

19 And it might help, because Mr. Roffman and his
20 colleague are new to this case, for me to recite what I
21 think is part of the relevant chronology, but I say this
22 also so that the defendant can correct and amplify it,
23 if necessary.

24 But Mr. Webb initially filed his counterclaims
25 with his answer on October 9, 2007. Under Rule

1 12(a)(2), Mr. Aguiar had 20 days to respond to the
2 counterclaims. He did not make any response to the
3 counterclaims at that time.

4 I conducted a hearing on February 15, 2008 and I
5 issued some oral orders that were memorialized in a
6 later written order. I ordered Mr. Aguiar to either
7 cause counsel to appear or file a statement that he
8 would continue Pro Se by February 29, 2008. He didn't
9 meet that deadline. He did file a statement on March 4,
10 2008 after repeated attempts by my docket clerk to
11 contact him and remind him to do so.

12 The February 15, 2008 order also required the
13 parties to file, preferably jointly, a proposed schedule
14 and statement regarding mediation by March 5, 2008.
15 Mr. Aguiar's statement that he would continue Pro Se,
16 filed on March 4, 2008, also stated that he would go to
17 mediation, but it contained no information about the
18 proposed schedule. Although Mr. Webb stated, in his
19 timely-filed case management statement of March 5, 2008,
20 that his counsel had been unable to obtain Mr. Aguiar's
21 cooperation in preparing a statement.

22 On March 6, 2008, I issued a scheduling order
23 memorializing the schedule set at the scheduling
24 conference the same day. Mr. Aguiar's amended complaint
25 and answer to counterclaim, as I said orally, were to be

1 filed by March 21, 2008. This is reflected in the
2 docket entry. However, I note that the actual order
3 that's on the docket, which was sent to Mr. Aguiar,
4 doesn't print correctly. The date is missing. However,
5 it seems clear to me, at the moment, that Mr. Aguiar
6 knew the deadline. He was told at the scheduling
7 conference that the deadline was March 21. He could
8 have called to confirm that if he was unsure. And
9 indeed, he filed an amended complaint on March 24th, the
10 Monday after the Friday on which it was due. However,
11 he did not file an answer to the counterclaims at all
12 until April 7th, over two weeks late.

13 On March 6th, I warned him that he must abide by
14 court orders and deadlines and that the consequences for
15 not doing so could be as severe as dismissal. Up to
16 this point I think there were at least -- that is, up
17 until the belated response to the counterclaims filed on
18 April 7th, there were at least six times that Mr. Aguiar
19 failed to meet the Court's deadlines or to obey rules or
20 orders. In addition, Mr. Aguiar's response to
21 Mr. Webb's motion for sanctions came 20 days after
22 Mr. Webb filed a motion. That doesn't satisfy the
23 requirement of Local Rule 7.1(b)(2) that such a response
24 be filed within 14 days.

25 So that's my present understanding of the context

1 in which this motion arises. Now, a Pro Se defendant's
2 pleadings are to be liberally construed, but he has to
3 obey orders, he has to comply with the substantive law.
4 The First Circuit has explained that in cases like
5 **Ahmed**, 118 F. 3rd 886 at 890. My present sense is that
6 Mr. Aguiar, despite given on several occasions
7 opportunities and warnings, failed to timely respond to
8 the counterclaims.

9 Construing them liberally, he may be disputing
10 some of them, like the fair use claim. He doesn't
11 address at all the trademark claims, which I believe
12 he's orally told me he wasn't maintaining anyway. But
13 it's just to let you know my present state of mind, that
14 I'm inclined to dismiss the trademark claims, permit
15 relatively prompt amended answers to the other
16 counterclaims, and order Mr. Aguiar to pay the
17 defendant's reasonable attorneys fees relating to this
18 motion, unless he can demonstrate just cause why he
19 shouldn't pay some or all of them.

20 MR. KLUFT: Thank you, your Honor. I
21 generally agree with your statement of the facts, but we
22 have a few things to add for your consideration and a
23 few things to say about the relief.

24 First of all, I want to remind the Court that when
25 Mr. Aguiar filed this complaint, initially it was about

1 eight months ago, and right before that, he had counsel
2 involved with this case, Mr. John Francure, who was the
3 author of the cease and desist letters to the various
4 on-line Internet service providers, which really led up
5 to this case. He chose to proceed, at that time,
6 without Mr. Francure.

7 I would also like to point out that in the eight
8 months that followed, Mr. Webb has suffered real harm
9 even though the injunction was not granted. Not only
10 has his attention and limited resources -- he's an
11 independent artist, have been diverted away from the
12 expression of his First Amendment rights to the defense
13 of his First Amendment rights, but, in addition, he has
14 had real, tangible problems, because of the pendency of
15 this case, raising money and you have affidavits before
16 you that go to this point. Every time I talk to my
17 client, I get another -- he tells me about another
18 person that said, you know, "We won't deal with you if
19 the case is ongoing."

20 Today, in fact, there's a fiscal sponsor in
21 Chicago, and for reasons outlined in the default motion,
22 I'm not going to say their name right now, and I'm happy
23 to tell the Court, because I just don't want them to be
24 bothered, but they're awaiting the outcome of this
25 hearing to decide whether to be his fiscal sponsor so

1 they can then apply for a State of Illinois Art Council
2 grant. And all of this harm is in addition to the
3 harassment on-line and the other things.

4 In effect, even though the injunction wasn't
5 granted, Mr. Aguiar has achieved a lot of what he set
6 out to achieve, which is to harm Mr. Aguiar's ability to
7 --

8 THE COURT: Mr. Webb's.

9 MR. KLUFT: I'm sorry. Thank you, your
10 Honor. -- Mr. Webb's ability to make the film. And to
11 -- as he has stated in open court, to try to control the
12 story, which may be tangentially related to his father.

13 I also want to point out, your Honor, with regard
14 to the sanctions you mentioned, that it, in part to try
15 to move this matter along faster in our own client's
16 interest and in part in reliance on Mr. Aguiar's
17 repeated statements twice that he's going to proceed
18 without counsel, Mr. Webb and his counsel have proceeded
19 to follow the Court's orders and the rules of procedure
20 in their filings, they have filed not only a motion, but
21 the answer, case management statements, you know, local
22 Rule 26 automatic disclosures. We've expended a lot of
23 time and wasted a month really since the last case
24 management conference in addition to the motion for
25 default.

1 Your Honor, if I were in Mr. Roffman's position, I
2 would be making the same type of request, and I do want
3 to work with him from this point going forward, but we
4 are where we are because of Mr. Aguiar's choices. And I
5 would hope that the Court would still consider an
6 outright dismissal with prejudice of the case pursuant
7 to our motion. And I understand there's a predilection
8 for some kind of procedure on the merits and --

9 THE COURT: Well, there is a preference for
10 decisions on the merits and, with regard to the
11 counterclaims other than the trademark counterclaim,
12 which is, I think, is not addressed at all, while
13 Mr. Aguiar evidently just took your responses and tried
14 to convert them, that liberally construing them, I'm
15 inclined to believe, you know, that he's denying,
16 there's a fair use defense, and there's a third issue --
17 and I do have to liberally construe them. And my
18 inclination, if I come out this way, would be not to
19 dismiss those counterclaims, but -- and I'll give
20 Mr. Roffman a relatively brief period of time to respond
21 to the counterclaims, maybe amend the complaint again,
22 and to come up with a schedule.

23 Because I've met with the parties. I'm not going
24 to sit down with Mr. Aguiar in the back again. I see
25 mischaracterizations on the Internet of what was

1 discussed. I didn't consider that a proceeding closed
2 to the public. I wanted an informal session to try to
3 understand what this is about better and ideally
4 mediate, which strikes me, at least absent the
5 assistance of counsel, is hopeless. One of the things
6 Mr. Aguiar needs is somebody to explain the law to him
7 because my perception is that his -- some of his
8 positions are based on misunderstandings of the law.
9 But this has -- you know, one of the things I have been
10 educated to understand is that the mere pendency of this
11 case is injurious to Mr. Webb's interests and efforts to
12 make his film and therefore it really does need to
13 proceed with all deliberate speed.

14 Would you like to be heard on the motion with
15 regard to the sanctions?

16 MR. ROFFMAN: Your Honor, I'm actually sort of
17 of two minds. I'm not sure I do want to be heard
18 specifically on their motion because we've just come
19 into the case late and I -- recently, and I would ask
20 your Honor to not rule specifically on their motion.
21 But I would like to address the substance of your
22 Honor's comments and Mr. Kluff's comments.

23 With respect to any potential injury to the
24 defendant, um, that, in my mind, is -- I think "injury"
25 is the wrong word. Because if a filmmaker is

1 intentionally infringing upon legitimate copyrights,
2 then it certainly is the appropriate functioning of the
3 market for people who are potentially going to finance
4 that operation to want those legal rights sorted out.

5 THE COURT: And, actually, I think even
6 Mr. Webb agrees and I agree. It's something, though,
7 that gives some urgency to this case going forward in an
8 informed way. It shouldn't linger for a long time. If
9 Mr. Aguiar's rights are being violated, his First
10 Amendment rights, that should stop as soon as reasonably
11 possible. If Mr. Aguiar's rights aren't being violated,
12 the Court should issue a decision that makes that clear
13 so Mr. Webb's First Amendment rights are not, in effect,
14 chilled by the -- improperly chilled by the pendency of
15 the case.

16 MR. ROFFMAN: Your Honor, I couldn't agree
17 more. And one of the things that we would like to do is
18 really get to the heart of the substance and to the
19 merits and, first of all, see if there's a way to work
20 things out and if not, have the right to adjudicate it.
21 And I don't think this is that complex a matter that
22 that can't be done under a relatively quick time frame.

23 We've come in, as you know, just within the last
24 couple of days and so I'm not in a position to discuss
25 the procedural problems that have happened in the case

1 to date. Now, obviously, as attorneys, we all have an
2 interest in preserving the Court's rules and the Court's
3 time frame. I would just ask your Honor to be -- to
4 consider that Mr. Aguiar's -- and I know you have been
5 considering it, has been operating Pro Se and is not
6 familiar with the rules and --

7 THE COURT: Well, it doesn't really take a
8 lawyer to cause somebody to understand that if he's
9 given a deadline for answering the counterclaims, he
10 doesn't have the right to answer them two weeks late.
11 And, you know, the first time this came up, there was no
12 answer. That's why I went through the chronology. And
13 then I issued orders and unless my docket clerk hounded
14 Mr. Aguiar, he didn't file anything. And the last time
15 I was here, I spelled it out. I said, "If you don't
16 make the filings on time, the case might get dismissed."

17 MR. ROFFMAN: Your Honor, I don't dispute any
18 of that and I'm not -- and I'm asking you to excuse
19 deadlines that have been missed. I do know, from having
20 spoken with Mr. Aguiar, yesterday and today, that he's
21 been really trying in good faith to keep up with this
22 system, which is very unfamiliar to him. And I hope now
23 that we've filed an appearance, going forward, we
24 obviously will keep with all of the Court's deadlines
25 and we will be able to explain to him and do ourselves

1 what we need to do both on the procedural side of the
2 law and the substantive side of the law.

3 In terms of the specific sanctions that your Honor
4 is considering, with respect to dismissing potential
5 trademark claims, if your Honor wants to do that, I
6 would ask that it be made explicit that that dismissal
7 is without prejudice, because he does have certain
8 trademark rights and those rights -- and I've seen, from
9 meeting with him, may potentially be being infringed by
10 others who are unrelated to this lawsuit as well and I
11 wouldn't want to see those other rights, as a collateral
12 consequence of the procedural errors in this case, be in
13 any way dismissed.

14 THE COURT: Well, "with prejudice" would only
15 be with prejudice with regard to Mr. Webb. Do you think
16 you may assert that Mr. Webb is violating possible
17 trademark rights of Mr. Aguiar?

18 MR. ROFFMAN: Your Honor, at this point I do
19 not expect to make such a claim, however, I haven't had
20 the time to do the work to figure it out.

21 THE COURT: Okay.

22 MR. ROFFMAN: And then secondly, with respect
23 to the financial sanction of attorneys fees, um, I
24 haven't seen Mr. Aguiar's financial statements. My
25 suspicion is that there may be a financial difficulty in

1 complying with that.

2 THE COURT: Well, the way the rule operates, I
3 would provide the defendant an opportunity to make an
4 application for the reasonable attorneys fees relating
5 to this motion, that's 16(f). I'd give you a chance to
6 respond. Your response could have two dimensions,
7 "That's an unreasonable amount for this matter" or, you
8 know, "There are circumstances that make an award of
9 expenses unjust," and you would cite cases, if there are
10 cases, saying, "Well, the Court should consider ability
11 to pay," and then the defendant would reply. And,
12 indeed, you know, we could talk about what the
13 appropriate amount is. I have no evidence telling me
14 whether or not Mr. Aguiar has the capacity to pay.
15 Certainly he seems to have the time to devote to this
16 case, but I don't know what his financial circumstances
17 are.

18 MR. ROFFMAN: Your Honor, I apologize. I had
19 misunderstood. I had thought you were considering
20 entering the order today. But we would --

21 THE COURT: I would enter the order, but the
22 amount would have to be briefed, or you could confer on
23 it, maybe you can agree on some amount in the
24 circumstances. But it would have to be briefed. And I
25 would give you a chance to respond and the amount

1 wouldn't be determined today.

2 MR. ROFFMAN: I appreciate that. We would
3 obviously be willing and able to brief that matter, your
4 Honor.

5 And, I guess, lastly in terms of really sort of
6 cutting to the chase in terms of the schedule, I would
7 ask your Honor, assuming that your Honor --

8 THE COURT: Well, I think I'm actually going
9 to get to that in a minute.

10 MR. ROFFMAN: Okay.

11 THE COURT: But I'm going to rule on the
12 motion for default or sanctions. It's hereby allowed to
13 the following extent.

14 On March 6th, 2008, I orally ordered Mr. Aguiar,
15 who was present, to respond to -- to file an amended
16 complaint and respond to the counterclaims by March 21,
17 2008. This was in the context of the previous failure
18 to respond to the counterclaims and the other failures
19 to obey scheduling. Mr. Aguiar filed an amended
20 complaint three days late. He did not file the response
21 to the counterclaims until April 7th, 2008, more than
22 two weeks late. I had warned Mr. Aguiar that the
23 failure to meet the deadlines or to seek relief from
24 them would -- could result in sanctions as drastic as
25 dismissal.

1 So I find that Mr. Aguiar failed to obey that
2 March 8th scheduling order, particularly -- that March
3 6th scheduling order particularly by not filing any
4 answer to the counterclaims until April 7th, 2008 and
5 therefore sanctions under Rule 16(f), which must be
6 just, are appropriate.

7 The answer to the counterclaim doesn't address the
8 trademark claims at all. And I don't recall whether it
9 was on the record or in the lobby, but Mr. Aguiar, at
10 least before he had counsel, told me or led me to
11 understand that he wasn't asserting that Mr. Webb
12 violated any trademark claims. So I am, as a sanction,
13 authorized, when just, by Rule 37(2)(b), hereby
14 dismissing -- I'm basically granting the motion for
15 declaratory judgment on the trademark claims. However,
16 I'm doing that without prejudice. If there's an amended
17 complaint that asserts trademark claims submitted by
18 counsel on a schedule that we'll develop, it will have
19 to be accompanied by a memorandum addressing why I
20 should permit the trademark claims to be reintroduced to
21 the case. That is, addressing why they have potential
22 merit, reminding me, although I won't forget that
23 there's a preference for resolving claims on the merits,
24 and why the failure, the repeated failure, including the
25 most recent failure to obey court orders, isn't an

1 appropriate sanction. And you must confer with
2 defendant's counsel to see if they're going to oppose
3 that. Perhaps they will or perhaps they won't.

4 With regard to the other counterclaims -- although
5 Mr. Aguiar didn't do what I expected him to, which is,
6 in a layman's way, tell me his position, liberally
7 construed, his belated counterclaim informs that the
8 defendant did meet, that he denies their right to
9 relief, um, and so I'll treat those as contested,
10 although I am going to require a new response to the
11 counterclaims filed by counsel.

12 However, Rule 16(f) provides that when there's
13 a -- when a party or attorney fails to obey a scheduling
14 order, as has occurred here, a Court may make such
15 orders as are just. It specifically provides: "In lieu
16 of or in addition to any other sanction, the judge shall
17 require the party to pay the reasonable expenses
18 incurred because of any noncompliance with this rule,
19 including attorneys fees, unless the judge finds that
20 the noncompliance was substantially justified or that
21 other circumstances make an award of expenses unjust."
22 In the circumstances of this case, Mr. Aguiar's failure
23 to timely file an answer to the counterclaim was not
24 substantially justified. I'll take up the issue of
25 whether there's something that makes an award or a

1 fuller award not just in the circumstances in response
2 to the defendant's submission for costs and attorneys
3 fees.

4 (Pause.)

5 THE COURT: Mr. Kluft, is there any problem in
6 making that submission in a week? You would have to
7 file by May 16th an affidavit with time records showing
8 what you would charge Mr. Webb, in these circumstances,
9 or maybe not charging Mr. Webb.

10 MR. KLUFT: I have no problem making that,
11 your Honor.

12 THE COURT: By May 16th. And, generally
13 speaking, you understand fee applications. Just say
14 "This is our fee." You know, "This is reasonable in
15 this community." You know, "This is the number of hours
16 we put in. This is reasonable. So we're seeking under
17 16(f) the following." And the two of you should confer
18 before you file that. I don't want you to run up more
19 expenses. If Mr. Roffman can provide you information
20 that Mr. Aguiar really doesn't have the means to pay
21 that amount and you agree on some lesser amount, then
22 fine.

23 Mr. Roffman, you are to respond by May 23rd. And
24 if any reply is required, it's to be filed by May 30th.

25 All right. Mr. Roffman, do you want to file an

1 amended complaint and an amended response to the
2 counterclaim?

3 MR. ROFFMAN: Yes, your Honor, I think the
4 case would benefit from an amended complaint and amended
5 answer to the counterclaim.

6 THE COURT: And is two weeks sufficient for
7 that?

8 MR. ROFFMAN: Yes, your Honor.

9 THE COURT: Okay. That shall be filed by May
10 23rd. A response shall be filed by June 6th.

11 And by June the 6th, you're to have conferred and
12 come up jointly, if possible, individually, if
13 necessary, with a proposed schedule for the case, to
14 proceed as quickly as possible. And we'll have a
15 further conference at 3:00 on June 12th.

16 MR. ROFFMAN: Your Honor, one clarification
17 question, please. When we file our amended complaint on
18 May 23rd, would you like us, at that point then, to file
19 our reply to the current counterclaim?

20 THE COURT: Yes.

21 MR. ROFFMAN: Okay. So then their answer to
22 the amended --

23 THE COURT: I'm sorry. The reply -- I'm
24 sorry. You mean the answer to the counterclaim?

25 MR. ROFFMAN: Yes. There's another term under

1 Rule 8 and I just can't remember what it is.

2 THE COURT: You've got to respond to the
3 counterclaim.

4 MR. ROFFMAN: So, I guess, to ask that
5 question more clearly, we're going to file an amended
6 complaint and, at the same time, file the answer to the
7 counterclaim that currently exists?

8 THE COURT: Yes.

9 MR. ROFFMAN: Okay. And then after that we'll
10 get a new answer on June 6th from the defendant on the
11 amended complaint that we filed?

12 THE COURT: Right.

13 MR. ROFFMAN: Okay. Thank you.

14 THE COURT: Is there anything else from the
15 parties' perspective for today?

16 MR. ROFFMAN: Not from us, your Honor. Thank
17 you.

18 MR. KLUFT: Not from us either, your Honor.

19 THE COURT: Okay. Well, Mr. Roffman, you're
20 familiar somewhat with the Fifth Amendment, but you say
21 you're not a criminal lawyer. I think in your firm
22 there are lawyers like Mr. Ullmann who have substantial
23 experience with the criminal law. I don't know how
24 these people interested in martial arts ordinarily
25 communicate on the Internet, but if there's something

1 that can properly be perceived as threatening harm to
2 somebody for litigating something in Federal court,
3 threats like that could result in people who participate
4 in making them serving up to 10 years in prison,
5 probably for each threat. So it may be that among the
6 services you want to provide Mr. Aguiar is some advice
7 on what is protected First Amendment activity with
8 regard to this case and what might expose him to
9 criminal prosecution and potential imprisonment.

10 MR. ROFFMAN: Your Honor, thank you. I will
11 look into that with all due haste.

12 THE COURT: Anything else? The Court is in
13 recess.

14 (Ends, 12:15 p.m.)
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I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes,
before Chief Judge Mark L. Wolf, on May 9, 2008, to the
best of my skill and ability.

/s/ Richard H. Romanow

RICHARD H. ROMANOW