

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

WILLIAM V. AGUIAR III, an individual

Plaintiff,

v.

FLOYD WEBB, an individual, et. al.

Defendants.

CIVIL ACTION NO.  
07-11673-MLW

**DECLARATION OF FLOYD WEBB IN OPPOSITION TO PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

I, Floyd Webb, declare as follows:

1. I am a Defendant in the above-captioned case. I have personal knowledge of the facts set forth in this declaration. I am over eighteen years of age. If called upon to testify I would and could testify competently to the matters stated herein.

2. I am a documentary filmmaker and I reside in Chicago, Illinois. I have produced a variety of documentary films and other films, videos and digital media. Among other credits, I was the Associate Producer of the feature film *Daughters of the Dust*, and the Chicago Producer of international co-production for the film *The World of Nat King Cole*. In addition, I have lectured on African American Cinema History at the School of the Art Institute of Chicago and on Convergence and New Media at the London School of Printing and the Institute of Contemporary Art.

3. My current film project is a documentary entitled, *The Search for Count Dante*. The film explores the life of John Keehan, a martial arts expert who changed his name in the 1960s to Count Juan Raphael Dante. In the film, I set Count Dante's story against the backdrop of social change during the 1960s and '70s and the emergence of martial arts in American popular consciousness.

4. The documentary is based on a number of interviews I have conducted with various people who knew Count Dante, including former students, Keehan's close friends, karate champions, mob informants, and tai chi masters. I have also conducted extensive research of news reports and other contemporaneous accounts of Count Dante's life.

5. Over the course of my research, I have learned that John Keehan rose to prominence on the South side of Chicago in the early 1960s as a leading practitioner of the martial arts. Among other things, Keehan co-founded the United States Karate Association and the World Karate Association. He also distinguished himself as one of the first American karate masters to accept African-American and Hispanic students.

6. My research has further revealed that after changing his name, Count Dante began promoting himself as the "Deadliest Man Alive" and the "Crown Prince of Death." He founded an organization he called the Black Dragon Fighting Society ("BDFS") and advertised heavily in comic books, offering his publication "The World's Deadliest Fighting Secrets" for five dollars. According to various press accounts I have researched, Count Dante was involved in the infamous "Dojo Wars" in which he attacked members of a rival martial arts organization, which resulted in the death of one of his associates. I have also found evidence that Count Dante is reputed to have been involved in the Purolator armored car robbery, one of the most significant

heists in Chicago's history. All the while, I have come to learn, he apparently created hair designs for Playboy models, and kept a baby lion, walking it about town as his pet. Other information I have gathered shows that Count Dante even paid a visit to Muhammad Ali's home to challenge him to a boxing match.

7. Although the full length film is a work in progress, I created two trailers for the film, which are approximately one and a half minute long promotional previews of the full length film (the "Trailers"), to attract support and an audience for my film. Attached as Exhibit A is a true and correct copy of Trailer One. Attached as Exhibit B is a true and correct copy of Trailer Two.

8. I have also created an extensive website, [www.thesearchforcountdante.com](http://www.thesearchforcountdante.com) (the "Website"). In addition to watching Trailer One, visitors to the Website can watch interviews of people in the film, learn more about Count Dante's life, record video testimonials of their experience with Count Dante's book, read my biography and view notes and video clips that I created while making the film. Visitors are also invited to make monetary donations to support the film. The domain name for my website is registered with Network Solutions. The company that hosts my website is HostGator, which I have come to understand is controlled by The Planet.

9. Through my work on this film, I have been told that shortly before his death in 1975, Count Dante allegedly chose William Aguiar as his successor and "Supreme Grand Master" of the Black Dragon Fighting Society. William Aguiar III, the Plaintiff in this matter, has informed me that when his father passed away in 2005, he passed this title on to his son (Plaintiff Aguiar).

10. Since assuming this role, Plaintiff Aguiar has asserted ownership of the trademarks and copyrights in a variety of materials, including, "World's Deadliest Fighting Secrets," "The Count

Dante Fighting System,” “Black Dragon Fighting Society,” “The Count’s Logos,” and [www.countdante.com](http://www.countdante.com).

11. After Aguiar learned of my project, he has attempted to prevent me from using in my film or on my website any copyrighted or trademarked materials that he claims to own and claims that each “violation” is subject to two million dollars in damages and/or six years of imprisonment.

12. On June 26, 2007, Plaintiff’s attorney delivered a cease and desist letter to Network Solutions, the registrar for my domain name ([thesearchforcountdante.com](http://thesearchforcountdante.com)), which included a notarized affidavit of Plaintiff Aguiar swearing that the Website infringes copyrights and trademarks owned or controlled by Aguiar and/or BDFS. Networks Solutions sent a copy of the letter to me. Attached as Exhibit E is a true and correct copy of the Cease and Desist Letter Aguiar’s attorney John P. Francoeur sent to Network Solutions, dated June 26, 2007.

13. On July 10, 2007, Plaintiff’s attorney delivered a cease and desist letter to The Planet, the company that hosts my webpage ([www.thesearchforcountdante.com](http://www.thesearchforcountdante.com)) on its servers. This cease and desist letter again included a notarized affidavit of Defendant Aguiar swearing that the Website infringes copyrights and trademarks owned or controlled by Aguiar and/or BDFS. Attached as Exhibit F is a true and correct copy of the Cease and Desist Letter Aguiar’s attorney John P. Francoeur sent to The Planet, dated July 10, 2007.

14. At or around the same time, I discovered that my Website had been disabled. I complained to HostGator’s support department and was informed that The Planet had instructed its web hosting company, HostGator, to disable the Website because of Plaintiff’s cease and desist letter. HostGator blocked all public access to the Trailer and all other material on the

Website, as well as denied me access to files I uploaded and maintained on the Website, prevented me from remotely working with my collaborators on the film, and disabled my email account. The Planet then sent me a copy of Plaintiff's cease and desist letter.

15. When I learned that my website was blocked because of Aguiar's cease and desist letter, I continued to complain to HostGator's support department. I explained that my Website did not infringe Plaintiff's copyrights or trademarks. After HostGator's support personnel investigated the issue, they sent me an email stating that my account and Website had been reactivated because their investigation revealed that the Fair Use Doctrine clearly protected my work. Attached as Exhibit G is a true and correct copy of the July 25, 2007 email I received from HostGator. Access to my Website was immediately restored.

16. In January 2007, I uploaded the Trailers to YouTube ([www.youtube.com](http://www.youtube.com)) using my YouTube account name, archanjo88.

17. On or about June 20, 2007, I received two emails from YouTube notifying me that YouTube had blocked the webpages for the Trailers "as a result of a third-party notification by Black Dragon Fighting Society/Count Dante Fighting System claiming that this material is infringing." Aguiar, or someone acting on his behalf, had issued take down notices to YouTube. Attached as Exhibit H are true and correct copies of the June 20, 2007 emails YouTube sent me.

18. At that time, YouTube blocked all public access to the Trailers, substituting on the webpages (<http://www.youtube.com/watch?v=6JKpnurQQ24> and <http://www.youtube.com/watch?v=C-Bqb5pT5N0>) a notice stating that the videos were no longer available.

19. In response, I sent YouTube a counter notification on July 23, 2007. Attached as Exhibit I is a true and correct copy of the Counter Notice I sent to YouTube. After receiving my counter notification, YouTube restored access to the Trailers on the YouTube website.

20. Attached as Exhibit J is a true and correct copy of a frame from Trailer One (at minute marker 00:00:00 to 00:00:14). This frame is a montage of a still photograph and a film clip playing in the background. In the foreground of the frame there is a still publicity photograph of Count Dante. This Count Dante image also appears on the Website. I obtained this photograph from Bob Brown, a retired police officer, who had a print of the photograph in his private collection. Mr. Brown was a Count Dante student from 1963 through 1968. This print, which Mr. Brown showed me and allowed me to film, did not have a copyright notification on it. From my discussions with Mr. Brown and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph.

21. In the background of Ex. J, is an image from film footage from the movie "Dance of Death." In Trailer One, this film footage of Count Dante fighting another person plays behind the still photograph discussed above. I received this film footage from an anonymous source in New Zealand in or around August 2006. John Creeden II subsequently told me that he was the person who shot the original film footage of Count Dante, which must have been filmed before 1975 when Count Dante passed away. In July 2007, my partner, Barron Shepherd, paid John Creeden II and his son, John Creeden III, who was acting as his father's agent, \$1000 for a license for me to use this footage in the film.

22. Attached as Exhibit K is a true and correct copy of a frame from Trailer One (at minute marker 00:00:22 to 00:00:26). This frame contains an image of Count Dante that appeared as an

advertisement in the comic book Detective Comic, in 1975. This image also appears on the Website. I filmed this image from a copy of the comic book owned by a comic book collector who showed it to me.

23. Attached as Exhibit L is a true and correct copy of a frame from Trailer One, which contains a photograph of Count Dante breaking bricks (at minute marker 00:00:29 to 00:00:31). I obtained this image from Bob Brown's private collection. Mr. Brown had an actual print of the photograph, which was not marked with a copyright notification. This print, which Mr. Brown showed me and allowed me to film, did not have a copyright notification on it. From my discussions with Mr. Brown and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph. This photograph also appeared in *Black Belt* magazine.

24. Attached as Exhibit M is a true and correct copy of a frame from Trailer One, which contains an image of John Keehan in high school (at minute marker 00:00:31 to 00:00:35). I filmed this image from a copy of the Mount Carmel High School yearbook, maintained at Mount Carmel High School.

25. Attached as Exhibit N is a true and correct copy of a frame from Trailer One, which contains an image of Count Dante and a Dante crest (at minute marker 00:00:38 to 00:00:43). The Count Dante photograph also appears on the Website. The crest is an image from *The World's Deadliest Fighting Secrets* (1968). I obtained the image of Count Dante from Bob Brown, who has a print of the photograph in his private collection. This print, which Mr. Brown showed me and allowed me to film, did not have a copyright notification on it. From my

discussions with Mr. Brown and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph.

26. Attached as Exhibit O is a true and correct copy of a frame from Trailer One, which contains an image of a Chicago Tribune article and photograph of John Keehan (at minute marker 00:00:43 to 00:00:48). I obtained this image from the Chicago Public Library's microfilm collection of the Chicago Tribune.

27. Attached as Exhibit P is a true and correct copy of a frame from Trailer One, which is an image of Count Dante with his hands framing the face of a woman (at minute marker 00:00:55 to 00:00:57). This image is from the booklet World's Deadliest Fighting Secrets (1968).

28. Attached as Exhibit Q is a true and correct copy of a frame from Trailer One, which contains an image of Count Dante posing with women in a modeling school (at minute marker 00:00:59 to 00:01:02). I obtained this image from a print that Doug Dwyer owned and had in his private collection. This print, which Mr. Dwyer showed me and allowed me to film, did not have a copyright notification on it. From my discussions with Mr. Dwyer and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph.

29. Attached as Exhibit R is a true and correct copy of a frame from Trailer One, which contains a photograph of Count Dante with his pet lion (at minute marker 00:01:02 to 00:01:06). I obtained this image from the Informer Newspaper dated July 21, 1968.

30. Attached as Exhibit S is a true and correct copy of a frame from Trailer One, which contains a picture of Count Dante's pet lion (at minute marker 00:01:06 to 00:01:08). This image



appeared in a program book for a karate tournament held in or around 1965. Jimmy Jones, who was a student of John Keehan from 1963 through 1967, has a copy of the program book in his private collection, and I obtained this image by filming his copy of the program.

31. Attached as Exhibit T is a true and correct copy of a frame from Trailer One, which is a modified image of a Chicago Sun-Times newspaper article (at minute marker 00:01:08 to 00:01:15). This image also appears on the Website. This frame contains an image of the Chicago Sun-Times newspaper dated April 24, 1970 as well as an image of Count Dante. I obtained the newspaper image from the Chicago Public Library's microfilm collection of the Chicago Sun-Times. I added the image of Count Dante so that it appears to be on the newspaper page. To the best of my recollection, that is a photograph from Bob Brown's private collection or a photograph from *Black Belt* magazine issued in or around early 1976. I do know that I did not get this image of Count Dante from *The World's Deadliest Fighting Secrets* booklet or from the videos that Plaintiff Aguiar claims to own.

32. Attached as Exhibit U is a true and correct copy of a frame from Trailer One, which is an animated picture of Count Dante fighting another person (at minute marker 00:01:23 to 00:01:29). Bob Brown, who owns a print of this photograph in his private collection, received it from Count Dante who passed it out as a publicity photograph. This print, which Mr. Brown showed me and allowed me to film, did not have a copyright notification on it. From my discussions with Mr. Brown and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph.

33. Attached as Exhibit V is a true and correct copy of a frame from Trailer Two, which is an extreme close up of Count Dante (at minute marker 00:14 to 00:16). This is a close up shot of the same photograph that I describe in paragraph 33, above.

34. Attached as Exhibit W is a true and correct copy of a frame from Trailer Two (at minute marker 00:16 to 00:24), which is a sequence of images that I filmed from a copy of the World's Deadliest Fighting Secrets booklet (1968).

35. Attached as Exhibit X is a true and correct copy of a frame from Trailer Two, which is another extreme close up of Count Dante (at minute marker 00:25 to 00:31). This is a close up shot of the same photograph that I describe in paragraph 33, above.

36. Attached as Exhibit Y is a true and correct copy of a frame from Trailer Two, which contains an image of Count Dante, his pet lion, and his class (at minute marker 00:35 to 00:36). I obtained this image from Bob Brown, who has a print of the photograph in his private collection. This print, which Mr. Brown showed me and allowed me to film, did not have a copyright notification on it. From my discussions with Mr. Brown and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph.

37. Attached as Exhibit Z is a true and correct copy of a frame from Trailer Two, which is the cover of the World's Deadliest Secrets booklet (1968) (at minute marker 00:39 to 00:41).

38. Attached as Exhibit AA is a true and correct copy of a frame from Trailer Two, which contains an image of Count Dante (at minute marker 00:41 to 00:45). This is a close up shot of the same photograph that I describe in paragraph 33, above.

39. Attached as Exhibit BB is a true and correct copy of a frame from Trailer Two, which contains an image of Count Dante fighting with a man pointing a gun at him (at minute marker 00:45 to 00:48). This image appeared in a program book for a karate tournament held in or around 1965. Jimmy Jones, who was a student of John Keehan from 1963 through 1967, has a copy of the program book in his private collection, and I obtained this image by filming his copy of the program.

40. Attached as Exhibit CC is a true and correct copy of a frame from Trailer Two, which contains an image of Count Dante with his hands framing the face of a woman (at minute marker 00:48 to 00:53). This image is from the World's Deadliest Fighting Secrets (1968). This is the same photograph I describe in paragraph 29, above.

41. Attached as Exhibit DD is a true and correct copy of a frame from Trailer Two, which contains a newspaper headline (at minute marker 00:53 to 01:01). This is an image from Informer Newspaper.

42. Attached as Exhibit EE is a true and correct copy of a frame from Trailer Two, which contains an animated picture of Count Dante fighting another person (at minute marker 00:01:01 to 00:01:03). Bob Brown, who owns a print of this photograph in his private collection, received it from Count Dante who passed it out as a publicity photograph. This print, which Mr. Brown showed me and allowed me to film, did not have a copyright notification on it. From my discussions with Mr. Brown and from my examination of the print photograph, I came to believe that it was disseminated by Count Dante as a publicity photograph. This is the same photograph I describe in paragraph 34, above.

43. Attached as Exhibit FF is a true and correct copy of a frame from Trailer Two, which is a modified image of a Chicago Sun-Times newspaper article (at minute marker 01:03 to 01:08). This is the same image I describe in paragraph 33, above.

44. Attached as Exhibit GG is a true and correct copy of a frame from Trailer Two, which contains a photograph of Count Dante's pet lion (at minute marker 01:14 to 01:16). This image appeared in a program book for a karate tournament held in or around 1965. Jimmy Jones, who was a student of John Keehan from 1963 through 1967, has a copy of the program book in his private collection, and I obtained this image by filming his copy of the program. This is the same image I describe in paragraph 32, above.

45. Attached as Exhibit HH is a true and correct copy of a frame from Trailer Two, which contains images of the Dance of Death sequence (at minute marker 01:20 to 01:23). I obtained these from the World's Deadliest Fighting Secrets booklet (1968).

46. Attached as Exhibit II is a true and correct copy of a frame from Trailer Two, which is an image of Count Dante (at minute marker 01:23 to 01:27). This is the same photograph of Count Dante that I describe in paragraph 33, above.

47. On my Website, I do not sell any services or how-to products.

48. John Creeden III, who asserts he is Aguiar's advisor, has made thinly veiled threats of physical harm against me on a message board on Aguiar's website. Attached as Exhibit C is a true and correct copy of a screenshot from the message board on the website [www.countdante.com](http://www.countdante.com), in which Creeden posted threatening messages to me. He has also

disparaged me and my work on other online message boards, as well as on my blog, and has also threatened me in emails.

49. Creeden has also directed racial slurs towards me on online message boards, using his screen name "lamokio" (which is also the same name he uses in his email address). Attached as Exhibit D is a true and correct copy of a screenshot from the message board on the website [www.bullshido.net](http://www.bullshido.net), in which Creeden posted a message directed at me and using a racial slur.

50. An injunction preventing me from any fair use of the disputed material would stop my production of the film dead in its tracks, silence my free speech and artistic expression, and cause the film to be left out of film festivals and excluded from other promotional opportunities.

I declare under penalty of perjury under the laws of the United States of America that the above statement is true and correct. Executed this 12th day of October, 2007 at Chicago, Illinois.

Dated: October 12, 2007

By:  \_\_\_\_\_  
Floyd Webb