

# EXHIBIT D



DAVID GROSSMAN  
Partner

10100 Santa Monica Blvd.  
Suite 2200  
Los Angeles, CA 90067

Direct 310.282.2077  
Main 310.282.2000  
Fax 310.919.3943  
dgrossman@loeb.com

Via Facsimile and U.S. Mail

September 8, 2011

Kristen McCallion  
FISH & RICHARDSON P.C.  
601 Lexington Avenue, 52nd Floor  
New York, NY 10022

Re: *Gordon v. DreamWorks Animation SKG, Inc., et al.*  
United States District Court, District of Massachusetts Case No. 1:11-CV-10255-JLT

Dear Kristen:

I am available for a call tomorrow at 11:30. I have been attempting to talk to you about the issues presented by Mr. Gordon's documents, including the issues described in my September 2, 2011 letter, since August 19 when I called you and asked you to call me back. Your letter does not address Defendants' concerns raised in my most recent letter, nor does your email provide that you will be prepared to meet and confer regarding those issues tomorrow. Nevertheless, we expect that you will be prepared to address, and to meet and confer regarding, all of those issues tomorrow.

Please use my dial-in #1-888-433-2831. The passcode is 3102822077.

I also requested last week that you let me know what time this week you would make the original documents described in your September 1, 2011 letter available for review. I have not received any response to that request. We will address this tomorrow and determine whether or not you are going to make these documents available for review, as you have not yet provided any potential dates or times for the document inspection that you proposed over a week ago.

I will address your last point first, as it is particularly troubling. Your reference to my "colleagues" obviously refers to a discussion held during a privileged settlement meeting. At the inception of this action, counsel for Defendants met with your firm and shared voluminous information regarding the creation and development of *Kung Fu Panda*, and openly explained the reasons that Mr. Gordon's claims have no merit whatsoever. We provided your firm with story outlines, declarations, and development documents demonstrating, beyond doubt, that the elements your client is claiming were taken from his work, were independently created by DreamWorks Animation. It appears that you are referencing that settlement meeting in your email. Your attempt to use discussions held during a settlement meeting in connection with litigation is wildly inappropriate. Further, your statements are not accurate. It was never represented that the original letter from 1999 was still in existence in DreamWorks Animation's files. As part of that privileged settlement discussion, you and Mr. Gordon's other counsel were specifically told that the letter had not been located, but you were shown an example of what the unsolicited rejection letter may have looked like – and this example incorporated the electronic data which was recorded relating to the rejection and return of Mr. Gordon's submission. That



record, along with a number of form letters and procedures relating to the treatment of unsolicited submissions, is being produced in Defendants' supplemental production tomorrow. In any event, given that Mr. Gordon kept a copy of the rejection letter – despite the fact that he apparently did not keep a copy of his purported submission – it appears that this issue is moot.

I do not understand your inquiry regarding “custodians” and I believe we are talking past each other. We can discuss tomorrow, but Defendants have already produced nearly 200,000 documents from numerous custodians. The names of virtually every witness identified on Defendants' disclosures were, in fact, included in those disclosures because Defendants collected documents that were authored by those individuals. Further, you already have all of the documents from DreamWorks Animation's development files relating to the development of *Kung Fu Panda*, which documents include the files relating to the creation of the key story elements and characters. These documents were gathered from DreamWorks Animation's files almost a year before Mr. Gordon even filed his lawsuit, because Defendants were forced to search for and collect documents relating to the development of the story and characters in the film in connection with the suit filed by Terence Dunn in Los Angeles Superior Court, regarding his claim that his ideas were used to create *Kung Fu Panda*. Given that the only material difference between Mr. Dunn's claim and this lawsuit is Mr. Gordon's baseless assertion that his alleged works were also the source for the visual representation of certain characters, Defendants also have produced tens of thousands of pages of artwork and files relating to the creation of the art for *Kung Fu Panda*. Indeed, you have files and images that were created by individuals whose artwork was not even included in the film, but was created during the production of the film.

We can discuss financial documents during our call tomorrow. We believe that the documents that we will provide to you will be more than sufficient to address any financial information necessary for this action and I believe that the parties can stipulate to the use of these financial summaries. I am not demanding that you stipulate before reviewing them, of course, and we can discuss the timing of your review of the financial documentation during our call.

With respect to communications with third parties regarding infringements of *Kung Fu Panda*, you still have not responded to our objections to this information, including the relevance of this information to Mr. Gordon's suit, or the burdensome nature of producing this information in this lawsuit. We are, of course, prepared to discuss this during our meet and confer call.

Finally, as you know, there has never been any agreement with respect to the form of document production in this action. A unilateral email drafted by Plaintiff's counsel is not such an agreement. Moreover, we discussed the form of document production during the initial Rule 26 conference of counsel, and I specifically declined to agree to a specific form of production. Your reference to Rule 34(b) is not well taken as no Rule 34 requests have been propounded in this action. The format of documents you have received thus far has been reasonable but has not been pursuant to any unilateral demands made by Plaintiff's counsel. The pdfs described in your letter are simply images and it is unclear what would be gained from converting images from pdf to tiff. It is also unclear why the excel files are problematic as produced. Meta data and extracted text has already been produced for all of these files. If you have some practical issues with the review of Defendants' production, I would appreciate your explaining those



issues tomorrow so that we can understand them and determine if there is a way to address them in a reasonable and cost-effective manner.

Sincerely,

A handwritten signature in black ink, appearing to read "David Grossman".

David Grossman  
Partner