

The Honorable Karen L. Strombom

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEN ARONSON,)
Plaintiff,)
v.)
DOG EAT DOG FILMS, INC.,)
Defendant.)

) No. 3:10-CV-05293-KLS
) COMBINED JOINT STATUS
) REPORT AND DISCOVERY
) PLAN PURSUANT TO FRCP 26(f)

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule CR 16 and this Court's Order of April 28, 2010, the parties completed their FRCP 26(f) discovery conference on July 7, 2010, by telephone conference, in which Bruce Johnson and Noelle Kvasnosky, counsel for Defendant Dog Eat Dog Films, Inc., and Tom Vertetis, counsel for Plaintiff Ken Aronson, participated. As a result of that conference, the parties submit this Joint Status and Discovery Plan.

1. Parties' Statements of Nature & Complexity of Case:

This case arises under multiple claims for relief, including claims for copyright infringement, invasion of privacy, and misappropriation of likeness. Jurisdiction lays primarily in the Federal Copyright Act, 17 U.S.C. § 301, *et seq.*

COMBINED JOINT STATUS REPORT AND DISCOVERY PLAN
(3:10-cv-05293 KLS) — 1

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 • 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 • Fax: (206) 757-7700

1 Defendant anticipates that this lawsuit will be resolved by early dispositive
2 motions. Defendant's Motion to Strike Plaintiff's Claims of Misappropriation of Likeness
3 and Invasion of Privacy is pending before this Court.

4 The plaintiff respectfully disagrees with the defendant's opinion regarding the early
5 disposition of the case.

6 **2. The results of the FRCP 26(f) conference.** The results of the FRCP 26(f)
7 conference are memorialized herein.

8 **3. Proposed Deadline for Joining Additional Parties:** The parties do not
9 anticipate joining any additional parties.

10 **4. ADR Method:** The parties believe that mediation is the ADR method that
11 should be used in this case.

12 **5. ADR Date:** The parties believe that mediation under CR 39.1 should take
13 place by July 1, 2011.

14 **6. Jointly Proposed Discovery Plan:**

15 A. The FRCP 26(f) conference was completed on July 7, 2010, and
16 the FRCP 26(a) initial disclosures were exchanged on July 20, 2010;

17 B. The parties believe discovery may be needed on the following
18 subjects: the ownership and creation of the copyrighted works Defendant
19 allegedly infringed; the purportedly private facts about Plaintiff allegedly
20 published by Defendant; the license to Defendant to use the underlying
21 copyrighted work at issue in *Sicko*; whether Defendant's use of the
22 underlying copyrighted work was a fair use; and Plaintiff's alleged
23 damages. Defendant believes that there is a need for phased discovery.

1 Defendant believes discovery should occur in the first phase on the issues
2 of the ownership and creation of the underlying copyrighted works at issue
3 and whether Defendant's use of the underlying copyrighted work was a
4 fair use. Defendant believes that discovery on the issue of Plaintiff's
5 alleged damages should occur in a second phase;

6 Plaintiff disagrees with the necessity of phased discovery.

7 C. The parties do not believe that any changes should be made in the
8 limitations on discovery imposed under the Federal and Local Rules, and
9 that no other discovery limitations should be imposed;

10 D. The parties hope to minimize expense by cooperating in the
11 scheduling of depositions, and by limiting deposition examination and any
12 other discovery to the issues in this case;

13 E. The parties do not request at this time that this Court enter any
14 orders under FRCP 26(c) or CR 16(b) and (c).

15 7. **Remainder of Discovery:** The parties believe that discovery can be
16 completed by June 1, 2011.

17 8. **Bifurcation:** Bifurcation is not necessary in this case.

18 9. **Pretrial Statements/Orders:** The parties do not believe that full pretrial
19 statements will be required, and for the sake of economy, if a trial is required, the
20 parties would propose to lodge a proposed pretrial order listing witnesses and
21 exhibits seven (7) days in advance of trial.

22 10. **Suggestions for Shortening of Simplifying Case.** Defendant believes
23 that this case will be resolved by early dispositive motions. Defendant's Special

1 Motion to Strike Plaintiff's Claims of Misappropriation of Likeness and Invasion
2 of Privacy is pending before this Court.

3 The plaintiff respectfully disagrees with the defendant's opinion regarding the early
4 disposition of the case.

5 **11. Proposed Trial Date:** The parties believe this case will be ready for trial
6 December 5, 2011.

7 **12. Jury Trial:** A trial would be a jury trial.

8 **13. Length of Trial:** The parties anticipate the trial would not exceed five trial
9 days.

10 **14. Potential Trial Counsel Scheduling Complications.** Defendant's counsel
11 is unavailable in October and November of 2011.

12 Plaintiff is unavailable in mid October 2011 and mid December 2011.

13 **15. Service.** All parties have been served.

14 DATED this 27th day of July, 2010.

15 Davis Wright Tremaine LLP
16 Attorneys Defendant
17 Dog Eat Dog Films, Inc.

18 By /s/ Noelle H. Kvasnosky
19 Bruce E. H. Johnson, WSBA # 7667
20 Noelle H. Kvasnosky, WSBA # 40023
21 1201 Third Avenue, Suite 2200
22 Seattle, Washington 98101-3045
Telephone: (206) 757-8069
Fax: (206) 757-7069
E-mail: brucejohnson@dwt.com
noellekvasnosky@dwt.com

15 Pfau Cochran Vertetis Kosnoff PLLC
16 Attorneys for Plaintiff
17 Ken Aronson

18 By /s/ Thomas B. Vertetis
19 Thomas B. Vertetis, WSBA # 29805
20 Jason P. Amala, WSBA # 37054
Pfau Cochran Vertetis Kosnoff PLLC
911 Pacific Avenue
Suite 200
21 Tacoma, WA 98402
Telephone: (253) 777-0799
Fax: (253) 627-0654
E-mail: tom@pcvkllaw.com
jason@pcvkllaw.com