## ASSIGNED TO THE HONORABLE KAREN L. STROMBOM

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

KEN ARONSON,

Plaintiff,

NO. 3:10 CV-5293-KLS

vs.

DOG EAT DOG FILMS, INC.,

COMPLAINT

NOTED FOR: October 12, 2010

MOTION FOR LEAVE TO AMEND

Defendant. Without Oral Argument

# I. RELIEF REQUESTED

Plaintiff respectfully requests that the Court grant his Motion for Leave to File the Amended Complaint.<sup>1</sup> The Plaintiff believes that amendment is proper under FRCP 15, relevant case law and the particular facts of the present case. The defendant has stated that Dog Eat Dog Films, Inc., is a "loan-out" company owned by Michael Moore and his wife Kathleen Glynn and that Goldflat Productions, LLC. (hereinafter "Goldflat") is the proper defendant.<sup>2</sup> Goldflat, also owned by Moore, is the company that produced *Sicko* and used the Plaintiff's footage without permission or compensation.

<sup>&</sup>lt;sup>1</sup> Declaration of Thomas B. Vertetis [hereinafter Vertetis Decl.], Exh. A (Plaintiff's Amended Complaint)

<sup>&</sup>lt;sup>2</sup> Vertetis Decl, Exh. B (Defendant's Answer and Affirmative and Other Defenses)

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25 26 Whether Plaintiff should be allowed to amend this complaint? Yes.

#### III. EVIDENCE RELIED UPON

This motion relies upon the Declaration of Thomas B. Vertetis and the pleadings and documents previously filed in this case. Attached as Exhibit A to the Declaration of Thomas B. Vertetis is a copy of the Plaintiff's proposed Amended Complaint.

### IV. FACTS

On March 24, 2010, Plaintiff Ken Aronson filed his complaint for damages.<sup>3</sup> In response, defendant Dog Eat Dog Films, Inc. filed its answer on June 9, 2010.<sup>4</sup> In a footnote, defendant claimed that the defendant Dog Eat Dog Films, Inc., is a "loan-out" company and that Goldflat Productions, LLC is the proper defendant.<sup>5</sup> Based upon defendant's representation, Plaintiff makes this motion to amend their original complaint to add Goldflat Production, LLC as a named defendant.

#### V. ARGUMENT

In Washington, leave to amend shall be freely given when justice so requires. CR 15; see also Quackenbush v. State, 72 Wn.2d 670, 672, 434 P.2d 736 (1967) ("Leave to amend is properly within the discretion of the trial court and should be freely given when justice so requires.") Proposed amendments to pleadings should be allowed unless the opposing party would be prejudiced. Olsen v. Roberts & Shaeffer Co., 25 Wn. App. 225, 227, 607 P.2d 319 (1980). Refusal to grant leave to amend where there is no showing of prejudice constitutes an abuse of discretion. Tagliani v. Cowell, 10 Wn. App. 227, 233, 517 P.2d 207 (1973).

<sup>&</sup>lt;sup>3</sup> Vertetis Decl., Exh. C (Plaintiff's Complaint)

<sup>&</sup>lt;sup>4</sup> See Exh. B.

<sup>&</sup>lt;sup>5</sup> *Id*.

If no prejudice is evident, an amendment may be granted even after substantial delay. Caruso v. Local Union No. 690 of Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 100 Wn. 2d 343, 670 P.2d 240 (1983). To successfully oppose a motion to amend, the adverse party must demonstrate actual prejudice that would result from the amendment. Boilerplate allegations about difficulties in preparing for trial are insufficient. Walla v. Johnson, 50 Wn. App. 879, 751 P.2d 334 (1988).

In this proposed amendment, Plaintiff relies upon the defendant's representation that Goldflat is the entity responsible for the misuse of Plaintiff's footage. The defendant cannot demonstrate that actual prejudice would result from the requested amendment. A proposed amended complaint is attached as Exhibit "A" to the supporting declaration.

#### VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court to allow Plaintiff to amend his complaint.

Dated this 12<sup>th</sup> day of October, 2010.

PFAU COCHRAN VERTETIS KOSNOFF, PLLC

Thomas B. Ve

as B. Verters WSBA No. 29805

thomas@pcvklaw.com Attorneys for Plaintiff

#### CERTIFICATE OF SERVICE

I, Jeanne Lyon, hereby certify that on today's date, I caused to be filed electronically (1) Plaintiff's Motion to Amend Complaint, and (2) the Declaration of Thomas B. Vertetis in Support of Plaintiff's Motion to Amend Complaint, with the court, using the CM/ECF system, which will send email notification of such filing to the below addresses, and I served a true and correct copy of the following documents by the method indicated below and addressed as follows:

X CM/ECF Notification via email service to: Bruce E. H. Johnson, at <a href="mailto:brucejohnson@dwt.com">brucejohnson@dwt.com</a> and Noelle Kvasnosky, at <a href="mailto:noellekvasnosky@dwt.com">noellekvasnosky@dwt.com</a>.

I declare under penalty of perjury under the laws of the United States of America, 28 U.S.C. ¶ 1746, that the foregoing is true and correct.

Dated this 12th day of October 2010, in Tacoma, Washington.

Jeanne I von

# ASSIGNED TO THE HONORABLE KAREN L. STROMBOM 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF WASHINGTON AT TACOMA 9 KEN ARONSON, 10 NO. 3:10 CV-5293-KLS Plaintiff, 11 12 VS. [PROPOSED] ORDER GRANTING LEAVE TO AMEND COMPLAINT DOG EAT DOG FILMS, INC., 13 Defendant. 14 15 THIS MATTER having come on regularly before the above-captioned Court upon 16 17 MOTION FOR LEAVE TO AMEND PLAINTIFF'S COMPLAINT, and the Court 18 having considered the records and files herein, including: 19 1. Motion For Leave to Amend Complaint, including all declarations, exhibits, and materials submitted in support thereof; 20 2. Opposition briefing, including all declarations, exhibits, and materials submitted in 21 support thereof; and, 22 3. Reply briefing, including all declarations, exhibits, and materials submitted in 23 support thereof; 24 25

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2	Having heard argument of counsel and otherwise deeming itself fully advised in the
3	premises, the Court rules as follows:
4	Motion for Leave to Amend Complaint is GRANTED or DENIED.
5	DONE IN OPEN COURT this day of, 2010.
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9	THE HONORABLE KAREN L. STROMBOM
10	Presented By:
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12	PFAU COCHRAN VERTETIS KOSNOFF PLLC
13	Summar -
14	Thomas B. Vertetis, WSBA No. 29805
15	thomas@pcvklaw.com Attorneys for Plaintiff
16	Attorneys for Frankfir
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