



## II ARGUMENT

### **A.) Mr. Cafiero's request for an injunction was not filed in accordance with Local Rules**

In accordance with the Practices and Procedures of Judge Kim R. Gibson, in section III, C, regarding Injunctions, it is specified: in an injunction and/or temporary restraining order, the moving party must establish that good faith efforts were made to contact the opposing party or its counsel prior to seeking relief, supported by the F.R.Civ.P. 65(b)

I was not contacted in any respect prior to being served papers on August 20, 2008. An injunction should not be granted against me. Mr. Cafiero has not argued any passages contained within my suit that he believes to be patently false. Instead, my entire claim is labeled "clearly defective." I believe I am within my First Amendment rights to speak publicly about my ordeal with Mr. Cafiero and The Misfits, respectively.

In September, 2008, I consented to would-be provisions enjoining me from public commentary about the Plaintiff in cooperation with an out of court settlement to end the dispute. To date, Mr. Cafiero and his attorney have not presented any proposed terms of a settlement.

### **B.) Mr. Cafiero's purported Copyright 'Statutes of Limitations' do not apply to this matter**

The entire case argues ownership and/or usage of a particular piece of animation I created in 1996. My "Complaint for Counter Suit" contends I created this work under specific terms held within a release form. Subsequently Mr. Cafiero used this animation in various ways for the advancement of his career which are clearly outside of the terms stipulated in the release form.

Upon notification of this lawsuit, I retained an attorney who specializes in intellectual property to communicate to Mr. Cafiero and his counsel that I retain ownership of the animation by virtue of the release form and it's terms. On September 15, 2008, Mr. Krasik, John Cafiero's attorney, expressed his client was not interested in acquiring outright ownership of the cartoon property. As of this date, Mr. Cafiero has conceded to rightful ownership of the animation. However, I remain without adequate remedy by law for the financial debt incurred as a result of Mr. Cafiero filing suit over material he admittedly does not, or ever, owned. I am also without adequate relief for the numerous instances Mr. Cafiero has used this piece of animation to further his professional career without my knowledge or approval.

Although this dispute centers around the cartoon footage, Mr. Cafiero and his counsel choose to argue their claims in footnotes (Page 5 of their recent motion). Mr. Cafiero and his attorney cite "statutes of limitations" which they feel relinquish the Plaintiff of his actions.

Even though I am proceeding as a pro se litigant, I am educated on Copyright Law. There are no such "statutes of limitations" that apply to the animation in question. Pursuant to United States Copyright Law § 302. **Duration of copyright: Works created on or after January 1, 1978<sup>1</sup>** (b) Joint Works. — In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and 70 years after such last surviving author's death.

### **C. A More Definite Statement of the Claims and Prayer for Relief**

1. Plaintiff John Cafiero has used the animated property of Defendant Doug Custer in furtherance of his professional career multiple times. Mr. Cafiero has presented the cartoon film to Geffen Records in 1997, resulting in being hired to direct and produce two music videos for The Misfits.

Plaintiff John Cafiero presented a portion of the animated property of Defendant Doug Custer to MTV and Powerplay Television in the fall of 1997 resulting in the national recognition of himself, John Cafiero, as the creator of the cartoon film.

Plaintiff John Cafiero has presented the animated property of Doug Custer to performers Insane Clown Posse resulting in being hired to direct and produce a feature length film, Big Money Hustlas, distributed by Island Def Jam in or around 1999.

Plaintiff John Cafiero asserts in his claim his intent to release the animated property of Defendant Doug Custer "at a time and in a manner of his choosing and to receive the economic benefits associated with such an initial release." Plaintiff John Cafiero describes the animated property of Defendant Doug Custer as being a "valuable and potentially-lucrative commodity."

Presently, I am without adequate relief for the usage of my animated property on behalf of Plaintiff John Cafiero. I am still unable to host this animation, which, without argument belongs to me, on Youtube.com or other video hosting sites.

I am requesting a judgment against Mr. Cafiero in regards to the animated property for the foregoing reasons in the amount of \$50,000.

2. Plaintiff John Cafiero presented to Geffen Records in 1997 one completely edited video for The Misfits created and owned by myself. Mr. Cafiero was subsequently hired to direct and produce two videos for The Misfits following the display of my video material without my knowledge or consent.

I am without adequate relief for the usage of my copyrighted property without my consent.

I am requesting a judgment against Mr. Cafiero in regards to the presentation of my copyrighted video material to Geffen Records in the amount of \$50,000.

3. Plaintiff John Cafiero, through his counsel, purchased web domains containing the names of intellectual property owned by myself on March 4, 2008.

Presently I am unable to operate the domains [www.festivalpublishing.com](http://www.festivalpublishing.com) and [www.osukapapsmear.com](http://www.osukapapsmear.com) as they belong to K&L Gates.

I am requesting Mr. Cafiero and his counsel to relinquish ownership of these domains and pay punitive damages in the amount of \$12,500.

4. Plaintiff John Cafiero has used his counsel to remove, under false pretenses, my lucrative business profile from Myspace.com several times.

Presently I am unable to create and maintain a Myspace.com profile for Festival Publishing without it being subsequently removed.

I am requesting the court to provide an order which allows me to proceed with a Myspace.com profile that is protected by Federal Law from being removed under false pretenses.

I am seeking punitive damages for the willful attempt to deprive me from operating my publishing business on Myspace.com in the amount of \$12,500.

5. Plaintiff John Cafiero has filed suit alleging character defamation for the public display of my fictional property Osuka Papsmear as it pertains to a specific internet blog.

I am asking the court to deny Mr. Cafiero any injunction enjoining me from displaying my intellectual property Osuka Papsmear under my First Amendment rights as well as for the reasons argued previously.

I am seeking punitive damages for suing me over my intellectual property in the amount of \$12,500.

6. Plaintiff John Cafiero has allegedly used internet message boards to attack my character, creating ill will and causing emotional harm to my well being.

I am without adequate remedy by law to Mr. Cafiero's on-line conduct, which has caused me significant distress.

I am seeking damages in the amount of \$12,500.

7. Plaintiff John Cafiero has filed suit requesting an injunction enjoining me from publicly speaking of him or the events that have transpired as they pertain to my official literary account.

I am asking the court to deny Mr. Cafiero any injunction enjoining me from discussing my professional history with him or The Misfits under my First Amendment rights as well as for the reasons argued previously.

I am seeking damages for the intent to deprive me of my First Amendment rights in the amount of \$12,500.

8. Plaintiff John Cafiero has filed suit over ownership of the animated material which has essentially been disputed in my favor.

I am seeking compensation for any and all legal fees, court costs and expenses of litigation, together with prejudgment interest as a result of this lawsuit. I am asking for all such other and further relief as the Court deems just and appropriate.

9. I am asking to not be found responsible for the Plaintiff's legal fees, court costs, expenses of litigation, etc.

### III CONCLUSION

For all the forgoing reasons, I motion to deny Mr. Cafiero his request to dismiss my "Complaint for Counter Suit." I have provided a more definite statement pursuant to Fed. R. Civ. P. 12(e). I hereby request this case to proceed on its merit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Doug Custer". The signature is stylized with a large, sweeping initial "D" and a cursive "Custer".

Doug Custer  
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Dated: November 17, 2008