

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RAY K. HARTER, JR., an Individual,)
RICHARD KEARNEY, an Individual, and)
ED CORNO, an Individual,)

Plaintiffs,)

Case No. 4:11-cv-2207

v.)

JURY TRIAL DEMANDED

DISNEY ENTERPRISES, INC.,)
BUENA VISTA HOME)
ENTERTAINMENT, INC.,)
KEY PIX PRODUCTIONS, INC.,)
WILLIAM MORRIS ENDEAVOR)
ENTERTAINMENT, LLC, f/k/a William)
Morris Agency, Inc.,)
ROBERT VINCE, an Individual,)
ANNA MCROBERTS, an Individual,)
JOHN FERRITER, an Individual,)
BARRY JEFFERY, an Individual, and)
DOES 1 – 10,)

Defendants.

COMPLAINT

COME NOW Plaintiffs Richard Kearney, Ray Harter, Jr. and Ed Corno, by and through their undersigned counsel, and for their causes of action against the Defendants state as follows:

INTRODUCTION

This is an action for copyright infringement and common law causes of action arising out of the Defendants' intentional, unauthorized and unlawful contributions to, and preparation, production and commercial exploitation of, two (2) motion picture screenplays and two (2) direct to home video motion pictures, which are titled *Santa Buddies: The Legend of Santa Paws* and *The Search for Santa Paws* (collectively referred to herein as "Santa Paws Films"), and each of which constitutes an unauthorized copy, reproduction and/or work that is derivative of one or more

versions of the Plaintiffs' original and copyrighted story titled *Santa Paws: The Story of Santa's Dog*.

The Santa Paws story is a heartwarming tale about the gift of a dog to Santa and the magic of Christmas. The dog, Santa Paws, saves Christmas for all of the good little boys and girls of the World despite the best efforts to the contrary by an evil, bitter, spiritless and Scrooge-like diamond eyed villainess. The Santa Paws Films are premised on a heartwarming tale about the gift of a dog to Santa and the magic of Christmas. The dog, curiously also named "Santa Paws", saves Christmas for all of the good little boys and girls of the World despite the best efforts to the contrary by an evil, bitter, spiritless and Scrooge-like diamond eyed villainess.

THE PARTIES

1. Plaintiff Richard Kearney is an individual and a citizen and resident of the State of Tennessee.
2. Plaintiff Ray Harter, Jr. is an individual and a citizen and resident of St. Louis County, Missouri.
3. Plaintiff Ed Corno is an individual and a citizen and resident of St. Louis County, Missouri.
4. Defendant Disney Enterprises, Inc. ("Disney") is a California Corporation with its principal place of business located at 500 S. Buena Vista St., Burbank, CA, 91521. Upon information and belief, Disney is engaged in the business of producing, acquiring and distributing motion pictures for theatrical exhibition, home entertainment and other forms of distribution. In this case, Disney produced and/or provided certain production facilities for the making of the Santa Paws Films.
5. According to the records of the U.S. Copyright Office, which Plaintiff retrieved from the Internet, Defendant Disney claims to own the copyrights to the Santa Paws Films. Attached hereto, incorporated by reference herein and labeled Exhibit A, is a true and correct copy of an Internet

record printed from the U.S. Copyright Office reflecting the registrations claimed by Disney in connection with the Santa Paws Films.

6. Defendant Buena Vista Home Entertainment, Inc. (“BV”) is a California Corporation with its principal place of business in Burbank, California. Upon information and belief, BV is either a division or a wholly-owned subsidiary of Disney Enterprises, Inc., and is engaged in the business of producing, acquiring and distributing motion pictures for home entertainment and other forms of distribution. In this case, BV distributed the Santa Paws Films for home entertainment and other forms of distribution.

7. Defendant Key Pix Productions, Inc. (“KPP”) is a California Corporation with its principal place of business in Malibu, California. Upon information and belief, KPP is engaged in the business of producing, acquiring and distributing motion pictures for home entertainment and other forms of distribution. In this case, KPP filmed, produced and/or provided certain production facilities for the making of the Santa Paws Films.

8. Defendant William Morris Endeavor Entertainment, LLC (“WME”) is a Delaware corporation with its principal place of business in Beverly Hills, California. Upon information and belief, WME is a nationwide talent agency that, at all times relevant hereto, had as one of its partners, Defendants John Ferriter and Barry Jeffery. Plaintiffs are further informed and believe, and therefore allege, that it was by, through and with the knowledge of Defendants Ferriter and Jeffery, acting on behalf of Defendant WME, that Defendants Ferriter, Jeffery and perhaps others were permitted to perpetrate the infringement of Plaintiffs’ copyrights in the *Santa Paws* story.

9. Defendant Robert Vince (“Vince”) is an individual who, upon information and belief, resides in the State of California. Upon information and belief Vince is engaged in the business of writing, producing, acquiring, and directing motion pictures for theatrical exhibition, home entertainment and

other forms of distribution. Upon information and belief, Vince is Defendant McRobert's producing partner and is a co-owner of KPP, and is individually credited as a producer, writer and director of the Santa Paws Films. As such, Defendant Vince is being sued here in both his individual capacity and as an agent of Defendant KPP.

10. Defendant Anna McRoberts ("McRoberts") is an individual who, upon information and belief, resides in the State of California. Upon information and belief McRoberts is engaged in the business of writing, producing, and acquiring motion pictures for theatrical exhibition, home entertainment and other forms of distribution. Upon information and believe, McRoberts is Defendant Vince's producing partner and is a co-owner of KPP, and is individually credited as a producer and writer of the Santa Paws Films. As such, Defendant McRoberts is being sued here in both her individual capacity and as an agent of Defendant KPP.

11. Defendant John Ferriter ("Ferriter") is an individual who, upon information and belief, resides in California. Upon information and belief, Ferriter is a talent agent who regularly represents authors and other artists for the purpose of developing entertainment projects. In this case, Ferriter represented Plaintiffs in connection with their efforts to have their *Santa Paws* story produced into a film or television program.

12. Defendant Barry Jeffery ("Jeffery") is an individual who, upon information and belief, resides in Tennessee. Upon information and belief, Jeffery is a talent agent who regularly represents authors and other artists for the purpose of developing entertainment projects. In this case, Jeffery represented Plaintiffs in connection with their efforts to have their *Santa Paws* story produced into a film or television program.

13. Upon information and belief, Does 1 through 10, inclusive, are in some manner responsible or legally liable for the actions, damages, events, transactions and occurrences alleged herein. The

true names and capacities of such fictitiously named Defendants, whether individual, corporate, associate, or otherwise are presently unknown to the Plaintiffs and the Plaintiffs will amend this Complaint to assert the true names and capacities of such fictitiously named Defendants when the same have been ascertained. For convenience, each reference herein to a named Defendant or to the Defendants collectively shall also refer to the Doe Defendants and each of them.

14. Upon information and belief, each and every one of the Defendants who took part in the production of the Santa Paws Films knew and intended that the Santa Paws Films would be advertised, exhibited, distributed and otherwise commercially exploited in every judicial district in the United States, including the Eastern District of Missouri.

15. Upon information and belief, each of the defendants that are domiciled in foreign countries negotiated and/or signed one or more contracts governing their “rights” to exploit the Santa Paws Films in one or more locations within the United States.

16. Upon information and belief, at all times relevant hereto, each of the Defendants was the agent, partner, co-conspirator, servant, employee, or employer of each of the other Defendants herein; that at all times relevant hereto each of the Defendants was acting within the course and scope of such agency, partnership, conspiracy, or employment, and that each of the Defendants is jointly and severally responsible for the damages that are herein alleged to have been sustained.

JURISDICTION AND VENUE

17. This is a civil action seeking monetary, declaratory, and other equitable relief (including, but not limited to, injunctive relief and an accounting) for copyright infringement under the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.* and for violations of various related state laws.

18. The Court has original jurisdiction over the subject matter of this action pursuant to 18 U.S.C. §1964 and 28 U.S.C. §§ 1331, 1338 and 1121.

19. The Court has supplemental jurisdiction over the related state law claims asserted herein pursuant to 28 U.S.C. §1367.

20. Venue of this action in the United States District Court for the Eastern District of Missouri is proper pursuant to 18 U.S.C. §1965 and 28 U.S.C. §§ 1400(a), 1391(b) and 1391(e), in that, as herein alleged: (a) each of the defendants named herein has minimum contacts with the United States, and is therefore subject to nationwide service of process under 18 U.S.C. §1965(d); (b) this action arises out willful, intentional and unlawful conduct that each of the defendants, their agents or their co-conspirators: (i) either conducted in, or expressly aimed toward, every judicial district within the United States and its territories, including this one, and (ii) knew or should have known would lead to the infliction of substantial harm in this state and in this judicial district; (c) a substantial part of the transactions, occurrences and events giving rise to Plaintiff's claims occurred within this judicial district; and (d) some of the Doe Defendants may be aliens for whom venue is proper in any judicial district within the United States and its territories.

FACTUAL BACKGROUND

Plaintiffs' creation of *Santa Paws*

21. The Plaintiffs jointly drafted a brief illustrated children's Christmas story that they alternatively referred to as *Santa Paws* or *Christmas Paws* at varying times since the initial draft of the work was completed in 1991 ("Original Draft") before deciding on calling the story *Santa Paws*. A true and correct copy of the Original Draft is attached hereto, incorporated by reference herein and labeled Exhibit B.

22. The main plot thread of the story centers on a dog who is given as a gift to Santa Claus in the North Pole. Santa names the dog "Paws" and Paws becomes Santa's pet dog. When the Christmas spirit in little boys and girls begins to dwindle (as evidenced by a magical Christmas tree whose

lights begin to dim with the fading Christmas spirit) at the hands of the evil ice witch and her magical icicle, it is up to Paws to embark on an ultimately successful search and rescue mission to save Christmas.

23. The Plaintiffs registered *Santa Paws* under both the title *Santa Paws* (U.S. Copyright TX0003342269) and the title *Christmas Paws* (U.S. Copyright TX0003628387). A true and correct copy of the *Santa Paws* registration is attached hereto, incorporated by reference herein and labeled Exhibit C. A true and correct copy of the *Christmas Paws* registration is attached hereto, incorporated by reference herein and labeled Exhibit D.

Plaintiffs' Efforts to Market *Santa Paws*

24. Authors of Children's stories typically do not write, illustrate, publish and copyright their stories purely for their own enjoyment. Rather, authors generally, as is the case with these Plaintiffs, write, illustrate, publish and copyright their works for the purpose of expressing ideas to others and preserving their right to commercially exploit the work on an exclusive basis.

25. For undiscovered authors, such as the Plaintiffs here, getting one's story read by someone in the film and/or television industry who has the authority to hire the authors to serve as screenwriters, to purchase or license the work, and/or to get the work produced into an actual movie is a tremendously burdensome undertaking. This is typically accomplished in the film industry utilizing a literary agent or agency.

26. Recognizing this reality, the Plaintiffs regularly traveled to and from the State of California and elsewhere in order to make and maintain entertainment industry contacts.

27. Plaintiffs ultimately engaged the services of Ferriter, Jeffery and WME (formerly known as William Morris Agency) to represent them to shop the *Santa Paws* to entertainment industry contacts for the purpose of developing and commercially exploiting the *Santa Paws* property.

28. Ferriter, Jeffery and WME presented *Santa Paws* to numerous industry contacts for the purpose of commercially exploiting the *Santa Paws* property. Plaintiff Corno received a letter from Jeffery dated August 14, 1996 reflecting the names of several companies, including a subsidiary of Defendant Disney, who had been contacted by Defendants and had “expressed interest in producing ‘Santa Paws’ with a commitment from a name [sic] star attached to the project”. A true and correct copy of this letter is attached hereto, incorporated by reference herein and labeled Exhibit E.

CLAIMS FOR RELIEF

I. COPYRIGHT INFRINGEMENT (all Defendants)

29. The allegations of the above and foregoing paragraphs of this Complaint are re-alleged and incorporated herein by reference.

30. *Santa Paws* is an original work of authorship, copyrightable and copyrighted subject matter under the laws of the United States.

31. At all times relevant hereto, the Plaintiffs have been and still are the owners of all copyright rights in and to *Santa Paws*, and have never assigned, licensed or otherwise transferred their copyright rights to any of the defendants, nor to any third party.

32. As stated above, all Defendants had access to Plaintiffs’ work *Santa Paws* at least as early as August 14, 1996 and had expressed interest to Plaintiffs in producing *Santa Paws* into a film or television entertainment project.

33. On or about November 24, 2009, the Defendants began distributing *Santa Buddies: The Legend of Santa Paws* for home viewing in the United States in various home media formats. Thereafter, the Defendants began distributing *Santa Buddies: The Legend of Santa Paws* for exhibition in international markets and for exhibition on free television and basic cable programming services.

34. On or about November 23, 2010, the Defendants began distributing *The Search for Santa Paws* for home viewing in the United States in various home media formats. Thereafter, the Defendants began distributing *The Search for Santa Paws* for exhibition in international markets and for exhibition on free television and basic cable programming services.

35. The Santa Paws Films are filled with substantial similarities to *Santa Paws*, as written and copyrighted by Plaintiffs, including instances of verbatim and nearly verbatim lines of dialogue and screen activity at comparable key plot points, as well as eerily similar uses of a magical icicle and magical Christmas tree in addition to the obvious overarching similarity of expressing a story about Santa's new dog who saves Christmas in spite of the best efforts of a domineering and holiday-spiritless female antagonist.

36. In addition, upon information and belief, the Defendants have exploited the Santa Paws Films in other ways, including, but not limited to, exploiting the Santa Paws Films through their licensing and merchandising divisions.

37. Defendants, in writing, directing, producing, filming, editing, creating marketing and distributing the Santa Paws Films have aided and abetted, and/or directly participated in, the infringement of Plaintiffs' copyrights by copying significant portions of the copyrighted material contained in the Plaintiffs' story. Indeed when viewed as a whole, the Santa Paws Films constitute a nearly wholesale and unauthorized reproduction of the main plot threads of *Santa Paws*, as written by the Plaintiffs.

38. For each version of the Santa Paws Films' screenplays that Defendants Vince and McRoberts wrote, and for each version of *Santa Paws* that Defendants Vince and McRoberts and/or the other Defendants used in the creation of the Santa Paws Films, the Defendants have committed separate

acts of copyright infringement and, as such, the Plaintiffs are entitled to an award of damages for each such violation.

39. Defendants have engaged in such conduct willfully and without the consent, permission, license or approval of the Plaintiffs.

40. By reason of Defendants' infringement, the Plaintiffs have sustained and will continue to sustain substantial injury, loss and damage to their ownership rights in the copyrighted story *Santa Paws*. Defendants' infringement of the Plaintiffs' copyrights has caused and will continue to cause the Plaintiff significant monetary damages.

41. The Plaintiff is further entitled to recover from the Defendants the gains, profits and advantages they have obtained and will obtain in the future as a result of their acts of copyright infringement.

WHEREFORE Plaintiffs pray this Honorable Court order an accounting of Defendants' revenues generated by the Santa Paws Films and enter any award in favor of Plaintiffs and against Defendants, jointly and severally, in an amount to be determined at a trial on the merits which will fairly and justly compensate Plaintiffs for the harms they have suffered as a direct and proximate result of the infringement of Defendants, including costs, punitive damages, attorneys' fees, pre and post-judgment interest and for such other and further relief as the Court may deem just and proper under the circumstances.

II. BREACH OF FIDUCIARY DUTY (against WME, Ferriter and Jeffery)

42. The allegations of the above paragraphs of this Complaint are re-alleged and incorporated herein by reference.

43. As agents of Plaintiffs for the purpose of procuring a contract or contracts with entertainment industry representatives who would commercially exploit the *Santa Paws* property.

44. As a result of the aforementioned agency relationship, a fiduciary duty existed between the Plaintiffs and Defendants WME, Ferriter and Jeffery.

45. Defendants owed a fiduciary duty of loyalty to the Plaintiffs while representing Plaintiffs in connection with their efforts to develop and commercially exploit the *Santa Paws* property into an entertainment project of widespread consumption.

46. Upon information and belief, Defendants WME, Ferriter and Jeffery breached this duty owed to Plaintiffs when they usurped a prospective business opportunity involving the development of the *Santa Paws* property from Plaintiffs and permitted, authorized, aided, encouraged, facilitated, or otherwise assisted in the development of the *Santa Paws* property by their co-Defendants without remuneration or other consideration being conferred upon Plaintiffs.

47. Upon information and belief, Defendants WME, Ferriter and Jeffery's breach of their duty of loyalty directly and proximately resulted in harm to Plaintiffs of the nature set forth above.

WHEREFORE Plaintiffs pray this Honorable Court enter any award in favor of Plaintiffs and against Defendants WME, John Ferriter and Barry Jeffery, jointly and severally, in an amount to be determined at a trial on the merits which will fairly and justly compensate Plaintiffs for the harms they have suffered as a direct and proximate result of the breach of fiduciary duty of loyalty of Defendants, including costs, punitive damages, attorneys' fees, pre and post-judgment interest and for such other and further relief as the Court may deem just and proper under the circumstances.

III. NEGLIGENCE (against WME, Ferriter and Jeffery)

48. The allegations of the above paragraphs of this Complaint are re-alleged and incorporated herein by reference.

49. As agents of Plaintiffs for the purpose of procuring a contract or contracts with entertainment industry representatives who would commercially exploit the *Santa Paws* property.

50. As a result of the aforementioned agency relationship, a fiduciary duty existed between the Plaintiffs and Defendants WME, Ferriter and Jeffery.

51. Defendants owed a duty of care to the Plaintiffs to protect Plaintiffs' interests in the *Santa Paws* property while representing Plaintiffs in connection with their efforts to develop and commercially exploit the *Santa Paws* property into an entertainment project of widespread consumption. This duty included the obligation to:

- (1) implement appropriate safeguards, including confidentiality agreements with prospective business associates, during the period of representation to ensure that any individual or entity who viewed *Santa Paws* did not retain copies of same upon the non-engagement of the prospective business associate;
- (2) ensure individuals and entities with whom WME, Ferriter and Jeffery discussed development of *Santa Paws* did not commercially exploit same without the expressed written consent of Plaintiffs.

52. Defendants WME, Ferriter and Jeffery breached these duties owed to Plaintiffs when they freely disseminated the *Santa Paws* property to third parties, including their co-Defendants.

53. Upon information and belief, Defendants WME, Ferriter and Jeffery's breach of these obligations directly and proximately resulted in harm to Plaintiffs of the nature set forth above.

WHEREFORE Plaintiffs pray this Honorable Court enter any award in favor of Plaintiffs and against Defendants WME, John Ferriter and Barry Jeffery, jointly and severally, in an amount to be determined at a trial on the merits which will fairly and justly compensate Plaintiffs for the harms they have suffered as a direct and proximate result of the negligence of Defendants, including costs, punitive damages, attorneys' fees, pre and post-judgment interest and for such other and further relief as the Court may deem just and proper under the circumstances.

VI. CIVIL CONSPIRACY (all Defendants)

54. The allegations of the above paragraphs of this Complaint are re-alleged and incorporated herein by reference.

55. Defendants consist of two or more persons and/or entities.

56. Defendants jointly held the object to be accomplished of producing entertainment projects derived from and based upon the copyrighted work *Santa Paws* owned by Plaintiffs without permission from Plaintiffs.

57. There was a meeting of the minds between the Defendants on the object or course of action to be pursued in accomplishing the infringement of *Santa Paws* through the development and production of the Santa Paws Films and related merchandising and promotional efforts.

58. Defendants jointly and severally took one or more unlawful overt acts in the development, production, distribution, marketing, merchandising and promotion of the infringing Santa Paws Films.

59. As a direct and proximate result of the actions of Defendants in furtherance of the aforementioned civil conspiracy, Plaintiffs have suffered and continue to suffer significant damages.

WHEREFORE Plaintiffs pray this Honorable Court enter judgment in favor of Plaintiffs and against Defendants, jointly and severally, in an amount to be determined at a trial on the merits, including costs, attorneys' fees, punitive damages, pre and post judgment interest and for such other and further relief as the Court deems just and proper under the circumstances.

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