

1 Jason Schultz (SBN 212600)
 jason@eff.org
 2 Corynne McSherry (SBN 221504)
 corynne@eff.org
 3 ELECTRONIC FRONTIER FOUNDATION
 4 454 Shotwell Street
 San Francisco, CA 94110
 Telephone: (415) 436-9333 x112
 5 Facsimile: (415) 436-9993

6 Attorneys for Plaintiff
 7 JEFFREY DIEHL

8
 9 UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 OAKLAND DIVISION

12
 13 JEFFREY DIEHL,

14 Plaintiff,

15 v.

16 MICHAEL CROOK,

17 Defendant.

) No. 06-CV-6800 SBA

) **STIPULATION OF DISMISSAL**
) **WITHOUT PREJUDICE**

) DEPT: Courtroom 3

) JUDGE: Hon. Sandra Brown Armstrong


18
 19
 20
 21
 22 IT IS HEREBY STIPULATED by and between Jeffrey Diehl and Michael Crook
 23 (“Parties”) that the above-captioned action, including all claims, counterclaims, and affirmative
 24 defenses, be and hereby is dismissed without prejudice pursuant to FRCP 41 (a)(1)(ii).

25 Each Party will bear its own costs and attorneys’ fees.

26 The Parties request that the Court retain jurisdiction to enforce the Settlement Agreement
 27 between Plaintiff Diehl and Defendant Crook, attached hereto as Exhibit A, by issuing an Order
 28

1 that explicitly retains jurisdiction to enforce the settlement agreement and incorporates the terms of
2 the Settlement Agreement, pursuant to *Kokkonen v. Guardian Life Insurance Co. of America*, 511
3 U.S. 375, 381-82 (1994). A Proposed Order accompanies this Stipulation.
4
5

6 Dated: Mar 12, 2007

7 
8 _____
9 Corynne McSherry
10 Electronic Frontier Foundation
11 Attorneys for Plaintiff Jeff Diehl

12 Dated: 3-10-07

13 
14 _____
15 Michael Crook
16 Defendant & Pro Se
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Jeffrey Diehl v. Michael Crook***N.D. Cal. Case No. C06-06800 SBA*****Settlement AGREEMENT**

THIS AGREEMENT is made this 9th day of February, 2007, by and between Michael Crook ("Crook"), an individual residing in Baldwinsville, New York, and Jeffrey Diehl ("Diehl"), an individual residing in San Francisco, California (collectively, "the Parties").

WHEREAS, on November 1, 2006, Mr. Diehl commenced a civil action against Mr. Crook seeking injunctive relief and damages for misrepresentation of copyright claims under the Digital Millennium Copyright Act and intentional interference with contractual relations; injunctive relief, restitution and disgorgement for unfair business practices; and declaratory relief ("the Action"); and

WHEREAS, on January 5, 2007, Mr. Crook filed counterclaims seeking damages for intentional infliction of emotional distress and intimidation; and

WHEREAS, the Parties wish to resolve the controversy between them amicably and without the need for further dispute or proceedings.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

DMCA Notices

1. Crook agrees not to issue any future cease and desist notices, notices under 17 U.S.C. § 512 ("DMCA notices"), requests for suspension, and/or any other similar processes to any person or entity in connection with the use of any video or image related to Crook's 2005 appearance on Fox News;

2. Crook agrees to send email to every person or entity to which he previously sent a DMCA notice and/or request for suspension in connection with the use of any video or image relating to Crook's 2005 appearance on Fox News, withdrawing the notice and/or request;

3. Crook agrees that he will refrain from submitting any future copyright cease-and-desist notices, DMCA notices, requests for suspension, and/or other similar processes in connection with the use of any copyrighted work, for a period of (five) 5 years from the date of the entry of the Order of Dismissal of this Action unless the material in question was personally authored, photographed, or originated in a tangible medium by, or formally assigned to, Crook and/or his spouse.

4. To the extent that Crook does issue any copyright cease-and-desist notices, DMCA notices, requests for suspension, or other threats regarding use of a copyrighted work, for a period of (five) 5 years from the date of the entry of the Order of Dismissal of this Action, Crook will first evaluate whether the use in question is a fair use and, at the top of any such notice, will include the Internet Uniform Resource Locator (URL) for (a) the webpage regarding this Action maintained by Diehl's counsel, currently located <http://www.eff.org/legal/cases/diehl_v_crook/>; and (b) a webpage containing a copy of the Joint Stipulation, Permanent Injunction and Order of Dismissal, the URL for which will be provided to Crook once the Order is entered and the webpage is created.

Copyright Education

5. Crook agrees to complete the following online courses on copyright law: *Understanding Basic Copyright Law 2006: Introduction and Overview of Basic Principles of Copyright Law and Copyright Office Practice* and *Advanced Seminar on Copyright Law 2006: Fair Use*.

6. By April 30, 2007, Crook will provide Diehl with certificates of attendance of the above courses.

Representation of Indigence and Stipulation Regarding Damages for Breach

7. Crook represents under penalty of perjury that he is indigent and that the financial documents he has provided to Diehl to substantiate this claim are true and accurate to the best of Crook's knowledge.

8. Based on the above representation of financial indigence, and review by Diehl's counsel of financial documents Crook has provided, Diehl waives any claim for financial compensation including attorneys' fees.

9. Crook agrees that if he breaches any term of this Agreement, including his representations of his financial status, Diehl's remedies shall include, without limitation, the right to require Crook to assign to Diehl all rights in any domain name Crook owns, as of the date of execution of this Agreement and/or at the time of the breach. In return, Diehl agrees to give Crook at least 48 hours notice of any alleged breach by Crook of this Agreement before commencing any court action to enforce this Agreement in order to provide an opportunity for Crook to cure said breaches and/or volunteer to transfer all rights associated with the above references Internet domains.

Video Statement

10. Within twenty-one days of the execution of this Agreement, Crook agrees to make a video statement ("the Video"), acceptable to Diehl, apologizing to Diehl for sending false DMCA notices and requests for suspension. The wording of the apology, jointly agreed to between the parties, is attached hereto as Exhibit A.

11. Crook agrees not to revoke or deny any statement made in the Video in any public forum;

12. Crook agrees to assign all rights in the Video to Diehl.

13. Crook agrees that, if he wishes to show the Video on any website or blog, he will do so exclusively via a link to the Video, the URL for which shall be provided by Diehl.

14. Upon completion of the Video, Crook shall submit the Video to Diehl for approval, which approval shall not be unreasonably withheld. Diehl agrees that the Video will not be disseminated to the public unless and until Diehl has approved it and the parties have submitted the Joint Stipulation and (Proposed) Order of Dismissal to the court as set forth below.

Request for Retention of Jurisdiction

15. Subject to Diehl's approval of the Video, Crook and Diehl will execute and submit to the Court a Motion for Dismissal and Proposed Order dismissing all claims against each other and incorporating the terms of this Agreement, in the form attached hereto as Exhibit __.

Release of Claims

16. Conditioned upon the parties' compliance with the terms and conditions of this Agreement, the parties, and their respective officers, directors, agents, servants,

employees, parents, subsidiaries, affiliated companies, attorneys, successors and assigns, hereby release each other from any and all claims, demands, damages, losses, liabilities, rights or causes of action, including but not limited to any claim for attorneys fees, arising out of or relating to the Action and/or the allegations asserted therein.

Additional Recitals

17. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any agreement or understanding, whether oral or written, that any party may claim was made with respect to the subject matter of the Agreement prior to the date of this Agreement. This Agreement may not be altered except by an instrument in writing signed by the parties against whom the modification is charged.

18. This Agreement shall be interpreted in accordance with the laws of the State of California. Any dispute or controversy between the parties arising under or in connection with this Agreement that is not subject to the continuing jurisdiction of the Northern District of California, if any, shall be submitted to a court in the state of California for resolution. Should either party breach this agreement, they will be liable for any associated attorneys fees and costs incurred in any legal action to enforce the agreement.

19. If any provision or sub-provision of this Agreement is found invalid or unenforceable, the balance of the Agreement, and all provisions thereof, shall remain in full force and effect. The failure of any party to enforce any term of this Agreement shall not be deemed a waiver of that term or any other term of this Agreement.

20. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assignees.

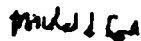
21. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same agreement.

JEFF DIEHL



Date: 2/9/07

MICHAEL CROOK



2/9/07

Date ...