

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

05 APR 17 AM 10:41

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

WAYNE ENTERPRISES, LP,)
)
Plaintiff,)

vs.)

DUKE SANDWICH HOLDINGS, INC.,)
DUKE SANDWICH COMPANY, INC.,)
DUKE SANDWICH FRANCHISING, INC.)
and ANDREW T. SMART, Individually,)
)
Defendants.)

1:06-cv-0617-SEB-VSS
CAUSE NO. _____

COMPLAINT FOR DAMAGES

Comes now WAYNE ENTERPRISES, LP (hereinafter "WE"), by counsel, Theodore J. Minch, and for its Complaint for Damages as against Defendants DUKE SANDWICH HOLDINGS, INC., DUKE SANDWICH COMPANY, INC., DUKE SANDWICH FRANCHISING, INC., and ANDREW SMART, Individually (hereinafter, unless otherwise delineated, collectively referred to as the "Defendants"), would respectfully show the court as follows:

PARTIES, JURISDICTION, AND VENUE

1. WE is a limited partnership duly organized and existing under the laws of the State of California with its principal office at 881 Dover Drive, Suite 150, Newport Beach, California 92663.

2. The Defendant, DUKE SANDWICH HOLDINGS, INC. (hereinafter "DSH"), upon information and belief, is a corporation incorporated under the laws of

State of South Carolina with its principal place of business at 1101 Poinsett Highway, Greenville, South Carolina 29609.

3. The Defendant, DUKE SANDWICH COMPANY, INC. (hereinafter “DSC”), upon information and belief, is a corporation incorporated under the laws of State of South Carolina with its principal place of business at 1101 Poinsett Highway, Greenville, South Carolina 29609.

4. The Defendant, DUKE SANDWICH FRANCHISING, INC. (hereinafter “DSF”), upon information and belief, is a corporation incorporated under the laws of State of South Carolina with its principal place of business at 300 East McBee Avenue, Suite 500, Greenville, South Carolina 29601.

5. The Defendant, ANDREW T. SMART, (hereinafter “SMART”), upon information and belief, is an individual residing at 12 Old Chick Springs Road, Taylors, South Carolina 29687-5231.

6. WE and Defendants are citizens of different states.

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331; this Court also has subject matter jurisdiction over the claims in this Complaint arising under the Lanham Act pursuant to 15 U.S.C. §§ 1121 and 28 U.S.C. § 1338.

8. This Court has personal jurisdiction over Defendants, as Defendants have committed acts that have caused tortious injury in this Judicial District pursuant to I.C. § 32-13-1-9.

9. Venue as related to Defendants is proper in this Court pursuant to 28 U.S.C. § 1391.

10. In addition to the foregoing, Defendants, as shown below, are entities and an individual which transact business within the State of Indiana without having registered to do so; therefore, pursuant to Title 23, Article 1 of the Indiana Code, the Indiana Secretary of State is an agent for service of process.

11. Since Defendants are subject to personal jurisdiction in this Judicial District, Defendants reside in this Judicial District for the purposes of 28 U.S.C. § 1391.

12. All conditions precedent to the bringing of this action have occurred or taken place.

13. The Defendants maintain an Internet web site (www.dukesandwich.com) by which individuals, corporations, and unincorporated entities around the world, including those in the State of Indiana, can communicate with it electronically. The web site offers Internet users information about Defendants, collectively, as well as the opportunity to obtain franchises for the opening of restaurants. The exercise of jurisdiction over Defendants, collectively, is permitted by the Indiana long arm statute, Ind. Code 32-36-1-1, and comports with due process.

14. This action arises pursuant to Federal Common Law, Indiana Common Law, and I.C. 34-14-1-1 (et. seq.), otherwise commonly known as the Uniform Declaratory Judgments Act.

**FACTUAL BACKGROUND AS RELATED TO THE
JOHN WAYNE PUBLICITY RIGHTS**

15. The late, great movie screen legend, John Wayne, was born May 26, 1907, in Winterset, Iowa and was named Marion Michael Morrison.

16. In starring in over two hundred (200) films over his fifty (50) year film career, John Wayne became one of the greatest and most recognized celebrity figures in the world.

17. The movies in which the late John Wayne starred ranged from low budget films to such classics as "Stagecoach" and "Red River;" John Wayne won an Oscar as best actor for another western, "True Grit," in 1969 though some of the best films John Wayne made told stories far from the Wild, Wild, American West such as "The Quiet Man" and "The Long Voyage Home."

18. In the last decades of his career, in addition to his status as a movie screen legend, John Wayne became an American folk hero who will always remain etched in the minds of millions.

19. John Wayne not only created the American Western movie genre with its clear-cut conflict between good and bad, right and wrong, but it became and still is virtually impossible to mention the word "western" without thinking of the "Duke," as John Wayne became popularly known.

20. By the early 1960's, one hundred sixty-one (161) of John Wayne's films grossed in excess of \$350 million and, likewise, John Wayne was paid as much as six hundred sixty-six thousand dollars (\$666,000) per movie role.

21. Throughout the late legend John Wayne's life and, for that matter, John Wayne's career as a world renowned Hollywood actor, John Wayne was commonly known and recognized by countless fans / consumers as the "Duke."

22. In John Wayne's own words, John Wayne became known as the "Duke" at an early age:

"There've been a lot of stories about how I got to be called Duke. One was that I played the part of a duke in a school play, which I never did. Sometimes, they even said I was descended from royalty! It was all a lot of rubbish. Hell, the truth is that I was named after a dog!"

23. Specifically, with regard to John Wayne's now immortalized "Duke" nickname, when young John Wayne was six (6), his family moved to California, eventually settling in Glendale. In Glendale, young Marion Morrison delivered newspapers in the morning with his trusty Airedale, Duke. The local Glendale firemen called them "Big Duke" (referring to the Airedale) and "Little Duke" (referring to John Wayne). John Wayne later accepted a full scholarship to play football at the University of Southern California. In the summer of 1926, USC head coach Howard Jones "fixed" the "Duke" up with a job as an assistant prop man on the set of a John Ford movie and the rest was history.

24. John Wayne, who died in 1979, remains one of America's most beloved celebrities. For the last 10 years, John Wayne has continued to command a top ten (10) spot in the Harris Poll for America's Favorite Movie Star. In fact, in 1995, John Wayne held the number one (1) spot as America's Favorite Movie Star. In addition to an unprecedented movie career that made John Wayne a popular figure in American culture, there is also the ongoing commitment to support cancer research that has become and remains a vital part of the John Wayne legacy.

25. In 1979, during John Wayne's lifetime, John Wayne solely and exclusively granted WE any and all commercial merchandising and allied rights relating to the use of his name, image, likeness, persona, signature, nickname (the "Duke"), voice or photographs (all foregoing intellectual property rights as associated with the late John

Wayne, unless otherwise noted, shall hereinafter be referred to as “Intellectual Property”); as such, WE is so registered as the successor-in-interest with the office of the Secretary of State of California in accordance with the requirements of California Civil Code §990, and its successor legislation under Civil Code § 3344.1.

26. WE has expended countless resources and funds in continuously using, advertising, licensing for use, and protecting the Intellectual Property, including but not limited to the “Duke” nickname as related to the late screen legend, John Wayne; accordingly, WE has realized tremendous revenue from said use, advertisement, and licensing of the Intellectual Property.

27. As a result of WE’s extensive marketing and sales efforts with regard to the “Duke” mark as well as the intense fame and celebrity attached to John Wayne, the “Duke” nickname has become synonymous with the late, great movie screen legend, John Wayne; the “Duke” mark as owned by WE should be and is aggressively protected from unauthorized, illegal, and infringing uses of the Intellectual Property as made by third parties without prior express approval from WE.

28. Based upon the foregoing, WE is the proprietor of the Intellectual Property.

29. Likewise, WE continues to carry out John Wayne's lifetime wishes by actively supporting cancer research, treatment, and education. In this pursuit, WE was directly involved in the creation of the John Wayne Cancer Foundation, and has licensed the name to the John Wayne Cancer Institute in Southern California, and the John Wayne Cancer Institute Auxiliary. Portions of proceeds from licensing revenues as secured from

third party licensees utilizing the intellectual property associated with the late great John Wayne are allocated to cancer research, treatment, and education.

30. To fulfill its mission, WE enters into selective licensing agreements for the JOHN WAYNE name and likeness as well as DUKE mark and actively and aggressively pursues any and all unauthorized third party users of said intellectual property rights who seek to trade off the John Wayne Intellectual Property.

31. Also, to maintain John Wayne's legendary status and notoriety and to protect the valuable commercial reputation and good will associated with the Intellectual Property, WE expends countless resources in the establishment and implementation of programs to develop, register, and protect the Intellectual Property, all of which serves to designate those goods and services associated with and emanating from WE.

32. The name of John Wayne and the "DUKE" nickname have tremendous commercial value, have been used for commercial purposes during his lifetime, and have been used continuously for commercial purposes since his death.

33. The voice of John Wayne has tremendous commercial value, was used for commercial purposes during his lifetime, and has been continuously used for commercial purposes since his death.

34. The image of John Wayne has tremendous commercial value, was used for commercial purposes during his lifetime, and has been continuously used for commercial purposes since his death.

35. The likeness of John Wayne has tremendous commercial value, was used for commercial purposes during his lifetime, and has been continuously used for commercial purposes since his death.

36. The distinct appearance of John Wayne has tremendous commercial value, was used for commercial purposes during his lifetime, and has been continuously used for commercial purposes since his death.

37. The mannerisms of John Wayne has tremendous commercial value, was used for commercial purposes during his lifetime, and has been continuously used for commercial purposes since his death.

38. WE has not given Defendants consent, either written or oral, to commercially (or otherwise) utilize any aspect of the Intellectual Property.

OWNERSHIP BY WEL OF THE JOHN WAYNE AND RELATED MARKS

39. WE is the owner of countless worldwide and domestic registered trademarks for the marks “JOHN WAYNE,” “WAYNE ENTERPRISES,” “JOHN WAYNE” signature, and “DUKE” (hereinafter the “WE Registrations”).

40. Likewise, WE is the owner of countless worldwide and domestic trademark applications featuring or containing the name “JOHN WAYNE,” the “JOHN WAYNE” signature, the “DUKE,” and other marks commonly associated with the late film legend (hereinafter the “WE Applications”).

41. As owner of the WE Registrations and the WE Applications and as owner and / or exclusive licensor of the WE Registrations and the WE Applications, WE continuously used the WE Registrations and the WE Applications on or in connection with countless goods and services in International and interstate commerce.

42. WE has continuously and aggressively protected its ownership of the WE Registrations and the WE Applications and / or the good will associated therewith

through a variety of policing activities. For example, WE has sent cease and desist letters to third parties suspected of infringing upon the WE Registrations and the WE Applications, and has initiated opposition proceedings in the United States Patent and Trademark Office as well as numerous International intellectual property offices, against third party unauthorized marks that are confusingly similar to the WE Registrations and the WE Applications.

43. Long before the acts herein complained of, the WE Registrations and the WE Applications, in this District and throughout the world, have become well-known trademarks associated by the public with John Wayne and WE. The WE Registrations and the WE Applications represent immeasurable good will that is owned exclusively by WE. Accordingly, the WE Registrations and the WE Applications are invaluable assets of WE and the legacy of the late great John Wayne.

**THE UNAUTHORIZED AND INFRINGING ACTIVITIES OF DEFENDANTS
DUKE SANDWICH HOLDINGS, INC., DUKE SANDWICH COMPANY, INC.,
DUKE SANDWICH FRANCHISING, INC., AND ANDREW SMART,
INDIVIDUALLY**

44. DSC was, upon information and belief, founded in Greenville South Carolina in 1917 by Eugenia Duke.

45. Upon information and belief, until, at the earliest, April, 2006, DSC did not have business operations outside the state of South Carolina; likewise, DSC is not commonly known to consumers outside the state of South Carolina or, for that matter, DSC's "hometown" of Greenville, South Carolina.

46. Despite said foregoing facts, DSC applied for a Federal trademark registration in the United States Patent and Trademark Office for the mark "Duke

Sandwich Company” (hereinafter the “DSC Mark”) on or about March 29, 2004 alleging, under the penalties of perjury, a first use in interstate commerce date of the DSC Mark of December 31, 1917 and that DSC maintains the exclusive right in and to the commercial use of the DSC Mark.

47. Thereafter, nearly eighteen (18) months later, DSC filed five (5) additional applications for the mark “Duke Sandwich Company” and “Duke Sandwich Company” and design on or about July 28, 2005 and August 23, 2005 again, under the penalties of perjury, alleging a first use in interstate commerce dates of December 31, 1917, 1978, and August 2, 2005.

48. Upon receiving notice of the DSC’s original trademark filing, WE sent a cease and desist letter to DSC on or about July 21, 2004 demanding that all use of the DSC Mark be stopped on the basis of WE’s priority both by way of WE’s prior use of the Intellectual Property in interstate commerce and WE’s prior-filed trademark applications for the mark “DUKE.”

49. On or about August 31, 2005, Defendants filed a Notice of Opposition, Opposition No. 91166459, against WE’s currently pending trademark application number 76/546,721 for the mark “DUKE” (hereinafter the “Opposition”) on the basis that it is “probable that consumers familiar with Defendants’ use of the DUKE SANDWICH marks will believe that ‘Applicant’s (sic)’ restaurants are sponsored, authorized, or otherwise approved by one or more of the ‘Opposers (sic).’ Defendants further base the Opposition on Defendant’s allegation that there is a likelihood of confusion between the Intellectual Property and Defendants’ marks.

50. As a result of the frivolously filed Opposition and Defendants' actions to arrest all use of the "DUKE" mark by WE, WE has been irreparably harmed in that WE has been unable to finalize new license agreements for the use of the "DUKE" mark.

51. Furthermore, Defendants' have irreparably tarnished the goodwill associated with the Intellectual Property by preposterously and without good faith basis claiming that, somehow, despite the fact Defendants have made no use of its marks in interstate commerce until, at the earliest, April, 2006, Defendants' marks are more widely known in the United States than "The Duke" himself, international screen legend John Wayne.

52. Despite Defendants' concerted efforts to irreparably and permanently tarnish the goodwill associated with the Intellectual Property, WE has not acquiesced to Defendants' demands that WE, in fact, license the "Duke" mark from Defendants to be used in association with those products, goods, and / or services associated with and or sponsored and / or endorsed by "The Duke" himself, the late John Wayne.

53. Likewise, Defendants' continued and / or attempted use of the "DUKE" mark in interstate commerce as associated with its goods or services has irreparably and, perhaps, permanently diluted the value of the Intellectual Property and through consumer's false association of the Intellectual Property with Defendants' operations which operations are not controlled, licensed, or policed by WE.

54. Despite the open, notorious, continuous, and worldwide commercial use of the "DUKE" mark by WE which use pre-dated that of Defendants, prior to the filing of the Opposition, WE had never been contacted by Defendants in an attempt to enforce whatever perceived rights Defendants claim to maintain in and to the "DUKE" mark.

IRREPARABLE HARM

55. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 54. of this Complaint for Damages.

57. As a direct result of Defendants' use of the Intellectual Property, including but not necessarily limited to the "DUKE" nickname, WE will be irreparably injured in that actual and potential customers will be misled and confused regarding the source, sponsorship, and origin of Defendants' goods, services, and / or products; as such, said consumers will mistakenly believe that Defendants' restaurants and products originate from or are authorized, sponsored, or approved by WE.

57. Defendants have knowingly and intentionally infringed upon WE's rights with intent to unfairly trade on and misappropriate the reputation and goodwill of WE, John Wayne, the WE Registrations, the WE Applications, the Intellectual Property, and / or the "DUKE" nickname as commonly and interchangeably associated with the late John Wayne.

58. WE's rights have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from such unauthorized and infringing uses of the Intellectual Property.

59. WE's remedy of law is inadequate to prevent further violation of its rights by Defendants, which violation is, upon information and belief, continuing unabated despite counsel for WE's written correspondence to Defendants.

COUNT I
TRADEMARK INFRINGEMENT UNDER
SECTION 32(1) OF THE LANHAM ACT

60. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 59. of this Complaint for Damages.

61. Defendants' use of the Intellectual Property, including but not limited to the "DUKE" nickname, infringes upon WE's exclusive rights in its Federally and Internationally registered trademarks and, as such, is in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) in that said conduct is likely to cause confusion and to cause the relevant public to mistakenly believe that there is a connection, association, or affiliation between WE, the late John Wayne, and Defendants.

62. Defendants' conduct as challenged herein by WE is intentional, malicious, and willful.

63. WE's rights have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from the use of the Intellectual Property, including but not limited to the "DUKE" nickname.

64. WEL's remedy of law is inadequate to prevent further violation of its rights.

COUNT II
STATE STATUTORY RIGHT OF PUBLICITY

65. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 64. of this Complaint for Damages.

66. John Wayne is a personality, as defined by I.C. § 32-36-1-1, because his name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, and / or mannerisms have commercial value.

67. John Wayne had continuously used and authorized the use of his rights of publicity for commercial purpose, as defined by I.C. § 32-36-1-2, during his lifetime.

68. John Wayne's rights of publicity have been transferred to WE at least as early as 1979, by direct bequeath; as such, WE may duly exercise and enforce these rights pursuant to I.C. § 32-36-1-17.

69. Defendants, by its activities described herein, have used aspects of John Wayne's right of publicity for a commercial purpose in violation of I.C. § 32-36-1-6 without first having obtained previous written consent of WE.

70. Defendants have knowingly, maliciously, and intentionally engaged in conduct prohibited by I.C. § 32-36-1-9 and the common law of publicity rights.

71. WE's rights have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from further continued use of the Intellectual Property outside the state of South Carolina, including but not limited to the "DUKE" nickname.

72. WE's remedy of law is inadequate to prevent further violation of its rights.

COUNT III
COMMON LAW RIGHTS OF PUBLICITY

73. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 72. of this Complaint for Damages.

74. John Wayne was a celebrity with a unique identity and persona that he commercially exploited during his lifetime.

75. John Wayne's persona comprises a combination of many features, including but not limited to his "tough guy" persona, which persona was carefully

cultivated by the Hollywood motion picture industry throughout John Wayne's career; it is this persona by which John Wayne is globally recognized and remembered.

76. Defendants' unauthorized commercial exploitation of John Wayne's persona constitutes a violation of the common law of publicity rights assigned to WE by the late John Wayne.

77. WE's rights have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from the use of the Intellectual Property, including but not limited to the "DUKE" nickname.

78. WE's remedy of law is inadequate to prevent further violation of its rights.

COUNT IV
UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(A)

79. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 78. of this Complaint for Damages.

80. WEL owns, and Defendants, since April, 2006, are intentionally and maliciously using in interstate commerce, the Intellectual Property, including but not necessarily limited to the "DUKE" nickname, in a manner that is likely to and has caused confusion, mistake, and / or deception in the marketplace as to the origin, sponsorship, or approval of Defendants' associated goods, services, and / or products by WE.

81. Defendants' activities constitute use in interstate commerce of a term, name, symbol, or device, or a false designation of origin, or a false or misleading description or representation of fact, which is likely to cause confusion, mistake, or to deceive as to the affiliation, connection, or association of Defendants' goods, services,

and / or products with the late John Wayne, and as to the origin, sponsorship, endorsement, or approval of Defendants' goods, services, and / or products by WE.

82. Defendants' activities have been willful, deliberate, and intentional, thereby causing a likelihood of confusion, and such uses were likewise done with the intent to trade upon the goodwill and reputation of John Wayne.

83. WE's business, goodwill, and reputation have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from their exploitative and infringing commercial business practices.

84. WE's rights have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from the use of the Intellectual Property, including but not limited to the "DUKE" nickname.

85. WE's remedy of law is inadequate to prevent further violation of its rights.

86. Defendants' activities constitute unfair competition in violation of the Federal Lanham Act, 15 U.S.C. § 1125(A).

COUNT V
COMMON LAW UNFAIR COMPETITION

87. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 86. of this Complaint for Damages.

88. Defendants have knowingly, intentionally, and maliciously incorporated and used the Intellectual Property, including but not necessarily limited to the "DUKE" nickname, in direct violation of the common law of the State of Indiana.

89. Defendants' actions constitute misappropriation of the Intellectual Property, including but not necessarily limited to the "DUKE" mark, as owned and enforced by WE.

90. Defendants' actions with regard to Defendants' unauthorized use of the Intellectual Property, including but not limited to the "DUKE" mark, were taken by Defendants knowingly, willfully, and intentionally and with full knowledge of the proprietary nature of the Intellectual Property, including but not necessarily limited to the "DUKE" mark as owned, licensed, and protected by WE.

91. WE's business, goodwill, and reputation have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from Defendants' exploitative and infringing commercial business practices.

92. WE's rights have been and will continue to be irreparably harmed by Defendant unless Defendant is enjoined from the use of the Intellectual Property, including but not limited to the "DUKE" nickname.

93. WE's remedy of law is inadequate to prevent further violation of its rights.

COUNT VI
UNJUST ENRICHMENT

94. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 93. of this Complaint for Damages.

95. Defendants have been unjustly enriched through their actions at the expense of and to the loss and detriment of WE.

COUNT VII
TORTIOUS INTERFERENCE OF CONTRACTS

96. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 95. of this Complaint for Damages.

97. WE has established in this pleading and as the evidence is heard WE expects to further prove the existence of contractual relationships and licenses for the commercial use of the Intellectual Property, including but not necessarily limited to the “DUKE” nickname; WE, as such, has therefore derived economic advantage from these contractual relationships and licenses.

98. Defendants are aware of WE’s ongoing and prospective contractual relationships and licenses.

99. Defendants, with knowledge of WE’s ongoing and prospective contractual relationships and licenses, intentionally interfered with said contractual relationships and licenses by incorporating the Intellectual Property, including but not necessarily limited to the “DUKE” nickname, into Defendants’ restaurant, product, and / or services name and, in so doing, have caused or attempted to cause, consumers to utilize Defendants’ products and / or services in the mistaken belief that said products and / or services are authorized by or offered in affiliation with WE.

100. Furthermore, with knowledge of WE’s ongoing and prospective contractual relationships and licenses and knowing of WE’s priority rights as preserved by WE’s prior use in interstate commerce of the “DUKE” mark and WE’s prior filing of a trademark application for the mark “DUKE,” intentionally interfered with said contractual relationships and licenses by instituting a meritless and frivolous formal trademark opposition proceeding against at least one (1) of the currently pending WE Applications.

101. Defendants have irreparably harmed WE by engaging in the tortious interference conduct as described herein above.

COUNT VIII
CONVERSION

102. WE incorporates by reference as though set forth fully herein, the allegations made in Paragraphs 1. through 100. of this Complaint for Damages.

103. Defendants, by engaging in the conduct described above, have exerted unauthorized control over the property of another in violation of I.C. § 35-43-4-2; to wit, the intellectual property rights of John Wayne, including but not necessarily limited to the “DUKE” nickname, as owned and enforced by WE.

104. Defendants have irreparably harmed WE by engaging in the conversion described herein above.

105. Pursuant to I.C. § 34-24-3-1, WE is entitled to the following: treble damages, costs of the action, reasonable attorneys’ fees, actual travel expenses, reasonable amount for loss of time, actual direct and indirect expenses for loss of time, and all other reasonable costs of collection.

WHEREFORE, Plaintiff Wayne Enterprises, LP (hereinafter “WE”) prays this Court for the following relief:

1. An award of actual damages, including profits, derived from the unauthorized use of John Wayne’s name, image, likeness, persona, signature, voice, photographs, and / or the “DUKE” nickname (hereinafter the “Intellectual Property”) and

for violation of John Wayne's publicity rights as owned by WE since at least 1979 pursuant to I.C. § 32-36-1-10(1)(B) and the common law;

2. An award of actual damages, including profits, derived from unauthorized use of the Intellectual Property, including but not necessarily limited to the "DUKE" nickname, pursuant to 15 U.S.C. § 1125(a) and the common law;

3. An award of treble damages for Defendants' knowing, willful, and / or intentional unauthorized use of the Intellectual Property, including but not necessarily limited to the "DUKE" nickname, pursuant to I.C. § 32-36-1-10(2) and, likewise pursuant to I.C. § 34-24-3-1;

4. An award of reasonable attorneys' fees, costs, expenses (including but not necessarily limited to actual travel expenses, reasonable loss of time, actual and indirect expenses for said loss of time), and / or all other reasonable costs of collection as related to this action and pursuant to I.C. § 32-36-1-12(1) and I.C. § 34-24-3-1;

5. An order preliminarily and permanently enjoining the Defendants and Defendants' franchisees from the unauthorized use of the Intellectual Property, including but not limited to the "DUKE" nickname, and from violating the publicity rights of the late John Wayne as now owned by WE pursuant to I.C. § 32-36-1-12(1) and the common law;

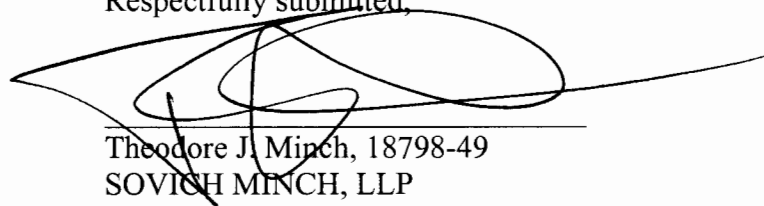
6. An order directing the Defendants to destroy any and all products in Defendants' possession which products may bear the Intellectual Property, including but not limited to the "DUKE" nickname, and to recall any and any and all products featuring the Intellectual Property, including but not limited to the "DUKE" nickname, in the

possession of Defendants' franchisees, retailers and distributors, and likewise, to subsequently destroy said products upon Defendants' receipt thereof;

7. An order directing Defendants' retail partners and franchisees to which any and all products featuring the Intellectual Property, including but not limited to the "DUKE" nickname, may have been distributed to either return said products to Defendants for destruction or to voluntarily destroy all said products in Defendants' franchisees' respective possession; and

8. Any and all other just, proper, and equitable relief in the premises.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'TJ Minch', is written over a horizontal line. The signature is highly cursive and loops around the line.

Theodore J. Minch, 18798-49
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