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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 ARTHUR METRANO,  
12 Plaintiff,

13 v.

14 TWENTIETH CENTURY FOX FILM  
15 CORPORATION; SETH McFARLANE;  
16 STEVE CALLAGHAN; and ALEX  
BORSTEIN

17 Defendants.

18 CASE NO: CV07-07916

19 COMPLAINT FOR DAMAGES  
20 FOR:

- 21 (1) COPYRIGHT INFRINGEMENT;  
22 (2) VIOLATION OF THE LANHAM ACT;  
23 (3) VIOLATION OF §43(c) OF THE LANHAM ACT;  
24 (4) VIOLATION OF COMMON LAW RIGHT OF PUBLICITY;  
25 (5) COMMON LAW MISAPPROPRIATION OF NAME AND LIKENESS

MM  
VBK

26 DEMAND FOR JURY TRIAL

27 Plaintiff, Arthur Metrano, alleges as follows:

28 THE PARTIES

1. Plaintiff is, and at all times herein mentioned was, an individual, a resident of Florida, engaged in the entertainment industry in the creation, writing, production and performance of stage, screen and television programs, plays, skits and comedy routines throughout the United States.

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1           2.     Plaintiff is informed and believes and thereon alleges that Defendant  
2 Twentieth Century Fox Film Corporation ("Fox") is, and at all times herein  
3 mentioned was, a corporation duly organized and existing under the laws of the State  
4 of Delaware, engaged in the entertainment industry in the creation, production,  
5 distribution and exploitation of motion pictures and television programs, duly  
6 qualified to do business and doing business in the State of California, with its  
7 principal place of business in Los Angeles County, California.

8           3.     Plaintiff is informed and believes and thereon alleges that Defendant  
9 Seth McFarlane ("McFarlane") is, and at all times herein mentioned was, an  
10 individual, engaged in the entertainment industry as a creator, producer, performer  
11 and exploiter of motion pictures and television programs. Plaintiff is further  
12 informed and believes and thereon alleges that, in doing the things herein mentioned,  
13 McFarlane was acting both on his own behalf and as agent for and within the course  
14 and scope of his authority as an agent and under the direction, and with the  
15 permission, approval and consent of, Fox.

16           4.     Plaintiff is informed and believes and thereon alleges that Defendant  
17 Alex Borstein ("Borstein") is, and at all times herein mentioned was, an individual  
18 engaged in the entertainment industry as a creator and writer of motion pictures and  
19 television programs. Plaintiff is further informed and believes and thereon alleges  
20 that, in doing the things herein mentioned, Borstein was acting both on his own  
21 behalf and as agent for and within the course and scope of his authority as an agent  
22 and under the direction, and with the permission, approval and consent of Fox and  
23 McFarlane or one of them.

24           5.     Plaintiff is informed and believes and thereon alleges the Defendant  
25 Steve Callaghan ("Callaghan") is, and at all times herein mentioned was, an  
26 individual engaged in the entertainment industry as a creator and writer of motion  
27 pictures and television programs. Plaintiff is further informed and believes and  
28 thereon alleges that, in doing the things herein mentioned, Callaghan was acting both

1 on his own behalf and as agent for and within the course and scope of his authority as  
2 an agent and under the direction, and with the permission, approval and consent of  
3 Fox and McFarlane or one of them.

#### 4 5 6 **JURISDICTION AND VENUE**

7 6. Plaintiff's first claim for relief arises under the Copyright Act of 1976, as  
8 amended, 17 U.S.C. §§ 101, et seq. Plaintiff's second claim for relief arises under the  
9 Lanham Act, 15 U.S.C. §1125. Accordingly, jurisdiction of these claims is based on  
10 28 U.S.C. §1338. This Court has supplemental jurisdiction over the third, fourth and  
11 fifth claims for relief for common law and statutory misappropriation of Plaintiffs'  
12 right of publicity under 28 U.S.C. §1367.

13 7. Venue in this district is proper pursuant to 28 U.S.C. §1400.

#### 14 15 **BACKGROUND**

##### 16 **Creation of Plaintiff's Intellectual Property Rights in "The Amazing Metrano"** 17 **Comedy Routine, Character and Music**

18 8. Heretofore and in 1969, Plaintiff created and first exploited a short  
19 comedy routine he calls "The Amazing Metrano," which consisted of Plaintiff, while  
20 humming a snappy tune, performing in pantomime various funny, simple tricks using  
21 his hands and fingers. He first performed "The Amazing Metrano" in June, 1969 on a  
22 television broadcast of the Lohman and Barkley Show on NBC Television. "The  
23 Amazing Metrano" is understood by the consuming public as trade dress that  
24 indicates the source of origin of Plaintiff's entertainment services. For convenience,  
25 the trade dress is herein referred to as "The Amazing Metrano". Plaintiff has,  
26 thereafter, regularly, consistently and repeatedly throughout the period from 1969  
27 through the present, performed "The Amazing Metrano" on a number of television  
28 programs including, but not limited to, The Tonight Show with Johnny Carson. Film

1 or video tape clips of his various performances of "The Amazing Metrano" are, and  
2 have been for several years, accessible upon Plaintiff's internet website. The comedy  
3 routine has become so identified with Plaintiff as its originator and only performer  
4 that "The Amazing Metrano" is, essentially, Plaintiff's trademark comedy routine.  
5

### 6 **Defendants' Conspiracy to Misappropriate "The Amazing Metrano"**

7 9. Plaintiff is informed and believes and thereon alleges that, commencing  
8 prior to January 1, 2005, Defendants, and each of them, with knowledge of Plaintiff's  
9 creation and ownership of "The Amazing Metrano" routine, knowingly conspired  
10 together to wrongfully: (a) misappropriate the routine, (b) copy the routine in  
11 animated form and (c) incorporate the animated depiction into a motion picture for  
12 exploitation and distribution for profit. The sole purpose and aim of this conspiracy  
13 was to wrongfully misappropriate Plaintiff's material and good will, to exclude  
14 Plaintiff from any participation in the motion picture or its revenues and thereby to  
15 take advantage of and profit from Plaintiff's creative efforts. Defendants, and each of  
16 them, thus, knowingly and willfully conspired and agreed among themselves to  
17 damage Plaintiff by utilizing Plaintiff's creation for their own use and benefit.  
18

### 19 **Defendants' Misappropriation of "The Amazing Metrano"**

20  
21 10. Plaintiff is informed and believes and thereon alleges that heretofore and  
22 prior to September 1, 2005, Fox, McFarlane, Borstein and Callaghan, and each of  
23 them, collaborated in the creation, production, distribution and exploitation of a  
24 successful television program, broadcast and transmitted as a weekly series, known as  
25 and entitled "The Family Guy", each segment consisting of a 30 minute animated  
26 comedy episode, which included as a continuing character the young son of the  
27 Griffith family, "Stewie Griffin", whose voice, among others, was portrayed by  
28 McFarlane. The animated show centers around the fictional Griffin family and its

1 father, a clumsy, misanthrope, Peter Griffin and his family, including his precocious,  
2 mischievous son, Stewie Griffin.

3 11. Plaintiff is informed and believes and thereon alleges that in or about  
4 July, 2005, Fox announced that beginning in September, 2005 Fox would distribute  
5 to the public in various formats, including DVD, a feature motion picture entitled  
6 "Stewie Griffin: The Untold Story", an animated film produced by Fox, McFarlane,  
7 Borstein and Callaghan, acted in by McFarlane and written, in part, by Borstein and  
8 Callaghan. Defendants, and each of them, misappropriated Plaintiff's signature  
9 comedy routine and used it in "Stewie Griffin: The Untold Story". Incorporated in  
10 "Stewie Griffin: The Untold Story" as a central, essential element thereof, is a  
11 depiction of an animated Jesus Christ, performing "miraculous" (but unimpressive)  
12 deeds before an animated crowd, according to the ironic remarks of the narrating  
13 character. The depicted performance consists of the comedy routine identical in  
14 music, sound and action to the "The Amazing Metrano". Stewie Griffin became the  
15 focus and a central character of the motion picture feature, released on DVD, "Stewie  
16 Griffin, The Untold Story." The motion picture includes the narration by an animated  
17 character describing time travel to the future and past and depicts his visit to a  
18 biblical time when he saw Jesus Christ perform Plaintiff's comedy routine and  
19 commented wryly that Christ's abilities may have been a bit exaggerated.

20 12. Plaintiff is informed and believes and thereon alleges that thereafter, and  
21 on or about September 25, 2005, the motion picture "Stewie Griffin: The Untold  
22 Story" including the comedy routine misappropriated from Plaintiff, was released to  
23 the public in various media and formats, including DVD. Plaintiff is informed and  
24 believes and thereon alleges that the motion picture has been successfully and  
25 profitably distributed and exploited in that numerous copies of the DVD have been  
26 sold at various prices, including a list price retail price of \$29.98 per copy.

27 13. Defendants used, copied and exploited Plaintiff's creation, the comedy  
28 routine described above called "The Amazing Metrano" entirely without the prior

1 knowledge, permission or consent of Plaintiff. Plaintiff received no compensation for  
2 the commercial use by Defendants, and each of them, of Plaintiff's creation.

3 14. Mr. Metrano has demanded that Fox cease and desist from using and  
4 exploiting his comedy routine but Fox has so far refused to do so.  
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7

### 8 **Plaintiff's Copyright Registration of "The Amazing Metrano"**

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10 15. Heretofore and on August 9, 2007 Plaintiff registered "The Amazing  
11 Metrano" in the United States Copyright Office.  
12

### 13 **FIRST CLAIM FOR RELIEF**

14 **(Copyright Infringement, 17 U.S.C. §101 et. seq.)**  
15

16 16. Plaintiff repeats, realleges and incorporates herein by this reference each  
17 and every allegation hereinabove set forth in Paragraphs 1 through 15, inclusive, of  
18 this Complaint as though fully set forth hereat.

19 17. Plaintiff is the owner of "The Amazing Metrano" comedy routine which  
20 contains substantial portions of original expression. Plaintiff's comedy routine  
21 presented on television, stage and on Plaintiff's website constitutes copyrightable  
22 subject matter and is therefore protected by copyright law.

23 18. In producing and distributing "Stewie Griffin, The Untold Story",  
24 Defendants, and each of them, copied substantial portions of Plaintiff's protectable  
25 expression. By so doing, Defendants, and each of them, knowingly and deliberately  
26 displayed, reproduced and distributed in the United States copies of protectable  
27 expression and made and distributed derivative works based upon Plaintiff's  
28 protectable expression. Defendants' acts have been and continue to be performed

1 without the permission, license or consent of Plaintiff and therefore constitute  
2 copyright infringement.

3 19. As a result of the infringement by Defendants, and each of them,  
4 Plaintiff suffered actual damages in an amount to be determined at trial and/or is  
5 entitled to statutory minimum damages. Defendants, and each of them, have also  
6 been unjustly enriched by the unlawful copying, display, use and marketing of  
7 Plaintiff's comedy routine and should be ordered to pay all gains, profits and  
8 advantages derived by Defendants from said infringement to Plaintiff.

9 20. Plaintiff is informed and believes and thereon alleges in engaging in the  
10 acts described above, Defendants, and each of them, are guilty of oppression, fraud,  
11 or malice, in that Defendants, and each of them, engaged in such conduct with the  
12 intent to vex, injury, or annoy or with a conscious and willful disregard of Plaintiff's  
13 rights, thereby entitling Plaintiff to an award of exemplary or punitive damages.

14  
15 **SECOND CLAIM FOR RELIEF**

16 **(Violation of Section 43 of the Lanham Act, 15 U.S.C. §1125)**

17  
18 21. Plaintiff repeats, realleges and incorporates herein by this reference each  
19 and every allegation hereinabove set forth in Paragraphs 1 through 20, inclusive, of  
20 this Complaint as though fully set forth hereat.

21 22. Plaintiff has continuously performed the trade dress known as "The  
22 Amazing Mertrano" comedy routine in trade and in interstate commerce since at least  
23 1969. Whenever the comedy routine is performed, it is announced that "The  
24 Amazing Metrano" will follow. The trade dress is an indicator of the source of  
25 Plaintiff's entertainment services. By reason of Plaintiff's popularity and continuous  
26 use of "The Amazing Metrano" in connection with Plaintiff's persona, it has become  
27 a famous mark and has acquired distinctiveness through secondary meaning in that  
28 large segments of the public associate "The Amazing Metrano" with the

1 entertainment services of Plaintiff.

2 23. Defendants, and each of them, used "The Amazing Metrano" mark in  
3 connection with the "Stewie Griffin, The Untold Story" in interstate commerce and  
4 without the permission or consent of Plaintiff.

5 24. Defendants' use of "The Amazing Metrano" mark in "Stewie Griffin,  
6 The Untold Story" is likely to cause confusion, or to cause mistake, or to deceive the  
7 public as to the affiliation, connection or association of Plaintiff with Defendants or  
8 "Stewie Griffin, The Untold Story" or is likely to cause confusion as to the origin,  
9 sponsorship, or approval of the "Stewie Griffin, The Untold Story" and such use by  
10 Defendants, and each of them, has damaged the distinctive quality of Plaintiff's mark.

11 25. Plaintiff is informed and believes and thereon alleges that as a direct and  
12 proximate result of Defendants' use of "The Amazing Metrano" and mark, Plaintiff  
13 has been or is likely to be injured in an amount in excess of \$2,000,000.

14  
15 **THIRD CLAIM FOR RELIEF**

16 **(Violation of §43(c) of the Lanham Act, 15 U.S.C. §1125(c))**

17  
18 26. Plaintiff repeats, realleges and incorporates herein by this reference each  
19 and every allegation hereinabove set forth in Paragraphs 1 through 19 and 22 through  
20 25, inclusive, of this Complaint as though fully set forth hereat.

21 27. Defendants' use, to which Plaintiff has not consented, of the trade dress  
22 known as "The Amazing Metrano" mark in "Stewie Griffin, The Untold Story"  
23 tarnishes and thereby dilutes Plaintiff's mark in that it associates the mark with anti-  
24 Christ, anti-Christian blasphemous statements, utterances, activities and sentiments  
25 and thereby casts the mark in a derogatory, negative and unacceptable light, diluting  
26 and diminishing its value.

27 28. Plaintiff is informed and believes and thereon alleges that as a direct and  
28 proximate result of the conduct of Defendants' tarnishing, denigrating and diluting



1 the trade dress known as "The Amazing Metrano" mark, Plaintiff has been or is likely  
2 to be injured in an amount in excess of \$2,000,000.00.

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4 **FOURTH CLAIM FOR RELIEF**  
5 **(Common Law Right of Publicity)**  
6

7 29. Plaintiff repeats, realleges and incorporates herein by this reference each  
8 and every allegation hereinabove set forth in Paragraphs 1 through 19 and 22 through  
9 28, inclusive, of this Complaint as though fully set forth hereat.

10 30. Defendants' acts, to which Plaintiff has not consented, also constitute  
11 common law misappropriation of Plaintiff's right of publicity in his comedy routine,  
12 identity and persona.

13 31. The misappropriation of Plaintiff's identity, creation and likeness was for  
14 the advantage of Defendants, and each of them, in that they exploited and continue to  
15 exploit "Stewie Griffin: The Untold Story" for gain and profit.

16 32. Plaintiff is informed and believes and thereon alleges as a result of  
17 Defendants' use of Plaintiff's comedy routine and music Plaintiff has suffered actual  
18 damages in an amount in excess of \$2,000,000.00.

19  
20 **FIFTH CLAIM FOR RELIEF**  
21 **(Common Law Misappropriation of Name and Likeness)**  
22

23 33. Plaintiff repeats, realleges and incorporates herein by this reference each  
24 and every allegation hereinabove set forth in Paragraphs 1 through 19 and 22 through  
25 32, inclusive, of this Complaint as though fully set forth hereat.

26 34. On or about September 25, 2005 and thereafter, Defendants, and each of  
27 them, without Plaintiff's knowledge or consent, invaded Plaintiff's right to privacy by  
28 misappropriating Plaintiff's identity by using his signature trademark comedy routine

1 "The Amazing Metrano" by having it, in all respects, in words, music, deed and  
2 action identical to Plaintiff's performance of his comedy routine, performed by an  
3 animated Jesus Christ character in the feature motion picture "Stewie Griffin: The  
4 Untold Story" and distributing that motion picture, including Plaintiff's creation, to  
5 the general public on DVD, and, Plaintiff is informed and believes and thereon  
6 alleges, on other matrices and in other media, without Plaintiff's consent and without  
7 compensating to Plaintiff.

8 35. Said conduct of Defendants, and each of them, involves the  
9 appropriation of Plaintiff's identity through the use of his signature trademark  
10 comedy routine by having it performed by an animated Jesus Christ character, but, in  
11 all respects, in words, music, deed and action identical to Plaintiff's performance of  
12 "The Amazing Metrano". This cynical, blasphemous sacrilegious use of Plaintiff's  
13 innocent comedy routine associates Plaintiff with a pernicious anti-Christ and anti-  
14 Christian message, thereby causing Plaintiff, who is Jewish, to suffer injury to his  
15 peace of mind and dignity and great emotional distress. The conduct of Defendants,  
16 and each of them, thus involved the misappropriation of Plaintiff's personality,  
17 identity, privacy and creation.

18 36. Plaintiff is informed and believes and thereon alleges that, as a direct and  
19 proximate result of the acts and conduct of the Defendants, and each of them, Plaintiff  
20 has been damaged in an amount which Plaintiff is presently unable to ascertain but  
21 which Plaintiff is informed and believes and therein alleges exceeds \$2,000,000.00.  
22

### 23 PRAYER

24 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of  
25 them, as follows:

#### 26 FIRST CLAIM FOR RELIEF FOR COPYRIGHT INFRINGEMENT

- 27 1. For an award of damages suffered by Plaintiff in an amount to be  
28 determined at trial;

- 1 2. For an award in the amount of Defendants' profits to be determined at  
2 trial;  
3 3. For injunctive relief;  
4 4. For an award of punitive damages;  
5 5. For an award of reasonable attorneys' fees and costs; and  
6 6. For such other and further relief the court deems appropriate.  
7

8 **SECOND CLAIM FOR RELIEF FOR VIOLATION OF THE LANHAM**  
9 **ACT**

- 10 1. For an award of damages suffered by Plaintiff in an amount to be  
11 determined at trial;  
12 2. For an award of treble the amount of damages sustained;  
13 3. For an award in the amount of Defendants' profits to be determined at  
14 trial;  
15 4. For injunctive relief;  
16 5. For a determination that this is an exception case;  
17 6. For an award of reasonable attorneys' fees and costs; and  
18 7. For such other and further relief the court deems appropriate.  
19

20 **THIRD CLAIM FOR RELIEF VIOLATION OF §43(c) OF THE LANHAM**  
21 **ACT,**

22 **15 U.S.C. §1125(e)**

- 23 1. For an award of damages suffered by Plaintiff in an amount in excess of  
24 \$2 million;  
25 2. For an award of profits attributable to Defendants' unauthorized use;  
26 3. For injunctive relief;  
27 4. For an award of punitive damages;  
28 5. For an award of reasonable attorneys' fees and costs; and

- 1 6. For such other and further relief the court deems appropriate.  
2

3 **FOURTH CLAIM FOR RELIEF FOR VIOLATION OF**  
4 **COMMON LAW RIGHT OF PUBLICITY**

- 5 1. For an award of damages suffered by Plaintiff in an amount in excess of  
6 \$2 million;  
7 2. For injunctive relief;  
8 3. For an award of punitive damages; and  
9 4. For such other and further relief the court deems appropriate.  
10

11 **FIFTH CLAIM FOR RELIEF FOR COMMON LAW**  
12 **MISAPPROPRIATION OF NAME AND LIKENESS**

- 13 1. For an award of damages suffered by Plaintiff in an amount in excess of  
14 \$2 million;  
15 2. For injunctive relief;  
16 3. For an award of punitive damages; and  
17 4. For such other and further relief the court deems appropriate.  
18

19 DATED: December 4, 2007

Respectfully submitted,

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22 By: 

PAUL M. HITTELMAN  
Attorneys for Plaintiff  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial in this matter.

DATED: December 4, 2007

Respectfully submitted,

By:

  
PAUL M. HITTELMAN  
Attorneys for Plaintiff

TMZ