

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

**Ergun M. Caner,**

**Plaintiff**

**v.**

**Jonathan Autry,**

**Defendant**

**: No.: 6:14-cv-4**

**:**

**: Civil Action - Law**

**: Jury Trial Demanded**

**: (Electronically Filed)**

**:**

**Brief in Support of  
Second Motion to Supplement Record**

**Joshua M. Autry, Esquire  
Pa. Supreme Ct. I.D. 208459  
Clymer Musser & Conrad, P.C.  
408 W. Chestnut St.  
Lancaster, PA 17603  
Phone: (717) 299-7101  
Fax: (717) 299-5115  
[josh.autry@clymerlaw.com](mailto:josh.autry@clymerlaw.com)  
Counsel for Jonathan Autry**

**Dated: May 1, 2014**

**I. Argument:**

Plaintiff Ergun Caner originally filed this action in the Northern District of Texas against Defendant Jonathan Autry as well as against Defendant Jason Smathers. The Northern District of Texas severed the case and transferred the claims against Jonathan Autry to this Court. There are still two pending dispositive motions (Docket #28 and Docket #29), which Jonathan Autry and Jason Smathers jointly filed. Dr. Caner filed briefs in response to both motions, which conceded nearly every argument by being non-responsible including fair use.<sup>1</sup> Jonathan Autry filed a reply brief. Briefing and the record have closed. Due to newly discovered evidence (Dr. Caner's copyright application), Jonathan Autry sought and received limited permission to supplement the record.

During oral argument on April 30<sup>th</sup>, for the first time, Dr. Caner's counsel stated that Jonathan Autry worked for Dr. Caner and that Dr. Caner fired Jonathan Autry, arguing that Jonathan Autry is a disgruntled former employee set on ruining Dr. Caner financially. Because Dr. Caner made these false representations for the first time at oral argument, Jonathan Autry has no opportunity to address these false representations. In the declaration attached to the Second Motion to Supplement, Jonathan Autry explains that Dr. Caner has never fired Jonathan Autry from any position; in fact, Jonathan Autry has never been an employee of Dr. Caner's. It appears that Dr. Caner continues to make any false misstatement he can in order to benefit his interests, including this attempt to falsely portray Jonathan Autry in a negative light.<sup>2</sup>

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<sup>1</sup> The Northern District of Texas found both that Dr. Caner brief conceded fair use, and additionally, that the videos were entitled to fair use protection in any event.

<sup>2</sup> Notably, Dr. Caner's counsel called Jonathan Autry a "cyber-terrorist," simply for posting videos over which Dr. Caner claims copyright. One wonders whether Dr. Caner considers the U.S. Marines a group of "compact-disc-burning-terrorists" for their production of the very same videos to Jason Smathers.

**II. Conclusion**

Therefore, Jonathan Autry requests this Honorable Court supplement the record to include his declaration.

Respectfully Submitted,

By: /s/ Joshua M. Autry  
Joshua M. Autry, Esquire  
PA Attorney I.D. #208459  
408 West Chestnut Street  
Lancaster, PA 17603  
Telephone: 717.299.7101  
Facsimile: 717.299.5511  
Counsel for Jonathan Autry

Date: May 1, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below I electronically filed the foregoing with the Court using the CM/ECF system, which sent notification of such filing to the following person(s) at the following email address(es):

David C. Gibbs  
[dgibbs@gibbsfirm.com](mailto:dgibbs@gibbsfirm.com)

/s/ Joshua M. Autry  
Joshua M. Autry, Esquire

Dated: May 1, 2014