

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

DVD COPY CONTROL ASSOCIATION,  
INC.,

Plaintiff and Respondent,

v.

ANDREW BUNNER,

Defendant and Appellant.

Court of Appeal No. H021153

Santa Clara County Superior Court

Case No. CV – 786804

The Hon. William J. Elfving, Judge

---

**DEFENDANT AND APPELLANT ANDREW BUNNER'S  
NOTICE OF TRIAL COURT MOTION TO VACATE PLAINTIFF DVD COPY  
CONTROL ASSOCIATION, INC.'S VOLUNTARY DISMISSAL**

**ON REMAND FROM THE SUPREME COURT OF CALIFORNIA**

THOMAS E. MOORE III (SBN 115107)  
TOMLINSON ZISKO MOROSOLI &  
MASER LLP  
200 Page Mill Road, Second Floor  
Palo Alto, CA 94306  
Telephone: (650) 325-8666  
Facsimile: (650) 324-1808

JAMES R. WHEATON (SBN 115230)  
DAVID A. GREENE (SBN 160107)  
FIRST AMENDMENT PROJECT  
1736 Franklin St, Ninth Floor  
Oakland, CA 94612  
Telephone: (510) 208-7744  
Facsimile: (510) 208-4562

CINDY A. COHN (SBN 145997)  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
San Francisco CA 94110  
Telephone: (415) 436-9333  
Facsimile: (415) 436-9993

RICHARD R. WIEBE (SBN 121156)  
LAW OFFICE OF RICHARD R. WIEBE  
425 California Street, Suite 2025  
San Francisco, CA 94104  
Telephone: (415) 433-3200  
Facsimile: (415) 433-6382

ARTHUR V. PLANK (SBN 072265)  
ALLONN E. LEVY (SBN 187251)  
HOPKINS & CARLEY LLC  
70 S. First Street  
San Jose, CA 95113  
Telephone: (408) 286-9800  
Facsimile: (408) 998-4790

Attorneys for Defendant and Appellant Andrew Bunner

Attached hereto for the information of the Court is a copy of the motion filed today in the trial court by defendant Andrew Bunner to vacate the voluntary dismissal without prejudice filed by plaintiff DVD Copy Control Association, Inc.

For the reasons set forth in the motion, the purported voluntary dismissal is void and ineffectual, and should be vacated. Accordingly, the action is not moot, DVD CCA's motion to dismiss the appeal should be denied, and the Court should decide the appeal on the merits.

Dated: February 18, 2004

Respectfully submitted,

---

Richard R. Wiebe  
Attorney for Defendant and Appellant  
Andrew Bunner

## CERTIFICATE OF SERVICE

I am over the age of 18 years, and not a party to this action. My business address is 425 California Street, Suite 2025, San Francisco, California, 94104, which is located in the county where the service described below took place.

On February 18, 2004, I served true and correct copies of the following document:

### **DEFENDANT AND APPELLANT ANDREW BUNNER'S OPPOSTION TO DVD CCA'S MOTION TO DISMISS THE APPEAL**

by placing copies in sealed envelopes, addressed as shown below, and tendering them to an employee of Federal Express Corporation (FedEx), with delivery fees provided for, for overnight delivery:

Robert Sugarman  
**Weil, Gotshal & Manges LLP**  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Attorneys for DVD CCA, Inc.

Jared Bobrow  
**Weil, Gotshal & Manges LLP**  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3000  
Facsimile: (650) 802-3100  
Attorneys for DVD CCA Inc.

And on the person named below by placing the copies in sealed envelopes addressed as shown below with postage fully prepaid, and depositing the envelopes on the date stated below in the United States mails in the county of San Francisco, California.

The Hon. William J. Elfving  
**Superior Court of Santa Clara  
County**  
191 North First Street  
San Jose, CA 95113

**Supreme Court**  
350 McAllister St.  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 18, 2004

---

Richard R. Wiebe