

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTOWN RECORD COMPANY, L.P., a	:	
California limited partnership; UMG	:	
RECORDINGS, INC., a Delaware	:	
corporation; SONY BMG MUSIC	:	CIVIL ACTION NO. 2:07-cv-04702-AB
ENTERTAINMENT, a Delaware general	:	
partnership; ZOMBA RECORDING LLC, a	:	
Delaware limited liability company; and	:	
ELEKTRA ENTERTAINMENT GROUP	:	
INC., a Delaware corporation,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
John C. Kovalcik,	:	
	:	
Defendant.	:	

**MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF PLAINTIFFS’ MOTION
TO DISMISS DEFENDANT’S COUNTERCLAIMS**

Plaintiffs Motown Record Co., Inc., *et al.*, respectfully submits this Motion for Leave to File a Reply in Support of their Motion to Dismiss Defendant’s Counterclaims. For the reasons set forth below, Plaintiffs respectfully request entry of an order allowing Plaintiffs to file a reply brief in support of Plaintiffs’ Motion to Dismiss Counterclaims. The Reply in Support of Plaintiffs’ Motion to Dismiss Defendant’s Counterclaims is attached as Exhibit 1 hereto.

ARGUMENT

On June 25, 2008, Plaintiffs filed their Motion to Dismiss Defendant’s Counterclaims. (Doc. 24). On July 10, 2008, Defendant filed his Response in Opposition to Plaintiffs’ Motion to Dismiss Defendant’s Counterclaims. (Doc. 27). Plaintiffs seek leave to file a Reply in Support of their Motion to Dismiss to address the inaccuracies in Defendant’s Opposition and to addresses issues not previously raised in Defendant’s Counterclaims and in Plaintiffs’ Motion to

Dismiss Defendant's Counterclaims. Finally, Plaintiffs seek leave to file a reply brief to respond to Defendant's request to take judicial notice of certain *disputed* facts, articles and cases related to Plaintiffs' discovery of Defendant's alleged infringement.

Specifically, Defendant incorrectly states the legal standard adopted by the Third Circuit in *Phillips v. County of Alleghany*, 515 F.3d 224, 232-33 (3d Cir. 2008). See Opposition Brief, p. 4. Defendant also incorrectly identifies the two-part test adopted by the U.S. Supreme for establishing the sham litigation exception to *Noerr-Pennington* immunity. See *id.* at p.7. Defendant confuses *Noerr-Pennington* immunity with Pennsylvania's doctrine of judicial immunity. See *id.* at p. 8. Defendant incorrectly concludes that if he establishes that Defendant's are not entitled to *Noerr-Pennington* immunity they are also not entitled to immunity under Pennsylvania's doctrine of judicial immunity. Defendant, however, cites no authority for this position and ignores Pennsylvania case law regarding when and how the doctrine of judicial immunity applies.

Defendant also raises several new arguments in his Opposition Brief, that were not evident in Defendant's Counterclaims, and were therefore, not addressed in Plaintiffs' Opening Brief. Defendant argues he does not need to allege actual damages to assert a violation of the Computer Fraud and Abuse Act ("CFAA"). See *id.* at p. 12-13. Defendant cites *Shurgard Storage Ctrs, Inc. v. Safeguard Self Storage, Inc.*, 119 F.Supp.2d 1121, 1126 (W.D. Wash. 2000), for the proposition that he need only allege that he has suffered a "loss." Defendant also contends for the first time in his Opposition Brief that he has asserted a claim for defamation per se. Plaintiffs request the opportunity to address both of these arguments raised by Defendant in their reply brief. See *id.* at p. 14-15.

Finally, Defendant requests that this Court take judicial notice of Defendant's conclusion, asserted in his Opposition Brief, that Plaintiffs are unable to determine the identity of an alleged infringer. *See id.* at 2-4. Defendant also asks this Court to take judicial notice of an article and several cases that Defendant contends support his conclusions. Because Plaintiffs dispute Defendant's conclusions regarding how Plaintiffs identify an alleged infringer and because the articles and cases do not stand for the propositions Defendant cites them for, Plaintiffs seek leave to file a reply brief to establish that Defendant's conclusions regarding Plaintiffs' method for discovering infringement, as well as the article and cases Defendant references to support his conclusion, are not appropriate for judicial notice under Federal Rule of Evidence 201(b).

Based on the foregoing, Plaintiffs respectfully request the opportunity to address all of these issues in a reply brief, and to further demonstrate the merits of Plaintiffs' Motion to Dismiss Defendant's Counterclaims. Accordingly, Plaintiffs respectfully requests that the Court grant them leave to file the Reply in Support of Plaintiffs' Motion to Dismiss Defendant's Counterclaims attached as Exhibit 1.

Dated: 8/20/08

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 20, 2008 a copy of the foregoing **MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO DISMISS DEFENDANT'S COUNTERCLAIMS** was served upon the Defendant via United States Mail as follows:

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
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California limited partnership; UMG	:	
RECORDINGS, INC., a Delaware	:	
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ENTERTAINMENT, a Delaware general	:	
partnership; ZOMBA RECORDING LLC, a	:	
Delaware limited liability company; and	:	
ELEKTRA ENTERTAINMENT GROUP	:	
INC., a Delaware corporation,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
John C. Kovalcik,	:	
	:	
Defendant.	:	

**REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION TO DISMISS
DEFENDANT’S COUNTERCLAIMS**

Plaintiffs respectfully submit this reply in further support of their motion to dismiss Defendant’s counterclaims.

INTRODUCTION

Plaintiffs’ Opening Brief demonstrated that Defendant’s counterclaims should be dismissed because (1) Plaintiffs’ actions are immune under both *Noerr-Pennington* and Pennsylvania’s doctrine of judicial immunity; and (2) that as to each of Defendant’s six Counterclaims he fails to state a claim for relief under Fed. R. Civ. P. 12(b)(6).

In response, Defendant incorrectly contends that his Counterclaims survive unless Plaintiffs establish that “Kovalcik can prove no set of facts to support his claims.” *See* Opposition Brief, p. 4. This however is not the standard on a motion to dismiss as the minimal pleading requirements under the *Conley* rule were flatly rejected; instead, the Third Circuit followed the U.S Supreme Court’s decision in *Bell Atlantic v. Twombly*. *Phillips v. County of*

Alleghany, 515 F.3d 224, 232-33 (3d Cir. 2008)(citing *Twombly*, 127 S. Ct. 1955, 1969 (2007)). Moreover, despite Defendant's bald assertion that *Noerr-Pennington* immunity does not apply because Plaintiffs' litigation is a sham, this argument fails because Defendant cannot allege that Plaintiffs' actions are objective baseless or that they interfered with a competitor. Defendant also fails to allege even minimal facts as to each of his Counterclaims that would raise his right to relief above the speculative level.

Finally, Defendant asks this Court to take judicial notice that Plaintiffs knew that MediaSentry "could not determine the identity of an alleged infringer" or computer being used to infringe Plaintiffs' copyright. *See* Opposition Brief, p. 3. Plaintiffs, however, dispute these facts, therefore, Defendant's request for judicial notice should be denied.

ARGUMENT

I. DEFENDANT INCORRECTLY STATES THE LEGAL STANDARD FOR A MOTION TO DISMISS ADOPTED BY THE THIRD CIRCUIT FOLLOWING THE U.S. SUPREME COURT'S DECISION IN *BELL ATLANTIC V. TWOMBLY*.

Defendant incorrectly states the standard with respect to a Rule 12(b)(6) motion to dismiss. The Defendant states that "[u]nless Plaintiffs demonstrate based on the pleadings alone beyond doubt that Kovalcik can prove *no set of facts* to support his claim which would entitled him to relief, their motion must be denied." Opposition Brief, p. 4 (emphasis added). Despite Defendant's statement to the contrary, the Third Circuit explicitly recognized that the *Conley* "no set of fact" language was rejected by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly*. *Phillips*, 515 F.3d at 232-33 (3d Cir. 2008)(citing *Twombly*, 127 S. Ct. 1955, 1969 (2007)). In *Phillips*, the Third Circuit held that "it is no longer sufficient to allege mere elements of a cause of action; instead a 'complaint must allege facts suggestive of [the proscribed] conduct.'" *Id.* (citing *Twombly*, 127 S. Ct. at 1969 n.8). Defendant's Counterclaims fail to meet this standard

and his Opposition Brief serves only to reaffirm the conclusory nature of the allegations made in his Counterclaims, as well as Defendant's assumption that his Counterclaims survive unless Plaintiffs prove there is "no set of facts" supporting Defendant's claims.

II. PLAINTIFFS ARE ENTITLED TO *NOERR-PENNINGTON* IMMUNITY AND THEIR CONDUCT IS PRIVILEGED UNDER PENNSYLVANIA'S DOCTRINE OF JUDICIAL IMMUNITY.

A. Defendant Fails to Adequately Allege Plaintiffs' Complaint is Sham Litigation, Therefore, the *Noerr-Pennington* Doctrine Bars Defendant's Counterclaims for Abuse of Process, Defamation and Civil Conspiracy.

In order to establish that Plaintiffs' Complaint for copyright infringement filed against Defendant is sham litigation, and therefore capable of defeating Plaintiffs' immunity under the *Noerr-Pennington* doctrine, Defendant must establish (1) that Plaintiffs' Complaint alleging copyright infringement against Defendant is objectively baseless; and (2) that Plaintiffs' Complaint for copyright infringement is being used to conceal "an attempt to interfere directly with the business relationships of a competitor." *See Professional Real Estate Investors, Inc., v. Columbia Pictures Indus. Inc.*, 508 U.S. 49, 60-61 (1993); *Erbe Electromedizin GMBH v. Canady Tech. LLC*, 529 F. Supp. 2d 577, 589 (W.D. Pa. Dec. 18, 2007)(rejecting sham litigation exception to *Noerr-Pennington* immunity where Plaintiff had probable cause for its patent infringement claims); *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 122-23 (3d Cir. 1999).

Defendant, however, incorrectly states that the two part test for establishing sham litigation is (1) that Plaintiffs' Complaint is objectively baseless; and (2) "that it is found[] on improper motives." *See* Opposition Brief, p.7. This is simply wrong. In fact, *Noerr-Pennington* "immunity is so potent that it protects petitioning notwithstanding an improper purpose or motive." *Erbe Electromedizin*, 529 F. Supp.2d at 588 (citing *Mariana v. Fisher*, 338 F.3d 189, 198 (3d Cir. 2003) (quoting *A.D. Bedell Wholesale Co., Inc. v. Philip Morris Inc.*, 263 F.3d 239, 250 (3d Cir. 2001))). This is why the second prong of the sham litigation test focuses on

whether Plaintiffs' purpose in bringing their lawsuit was to interfere with the business of a competitor, not whether Plaintiffs' motive was improper. *See Professional Real Estate*, 508 U.S. at 60-61.

1. Initiating an Action for Copyright Infringement is an Objectively Reasonable Means Used by Plaintiffs to Protect their Copyrights.

Defendant fails to establish that Plaintiffs' Complaint for copyright infringement is objectively baseless. This is because Defendant cannot refute that Plaintiffs had probable cause for filing their Complaint against Defendant. *See* Opening Brief, p. 11-12. Moreover, Defendant cannot deny that Plaintiffs frequently prevail in similar cases. *See id.*

“[T]he existence of probable cause to institute legal proceedings precludes a finding that [a] defendant has engaged in sham litigation . . . the existence of probable cause is an absolute defense.” *See Cheminor*, 138 F.3d at 122. As previously explained by Plaintiffs, MediaSentry, a third-party hired by Plaintiffs, found infringement occurring through an IP address that was identified by Defendant's University ISP as belonging to him. *See* Opening Brief, p. 4-5. Defendant cannot dispute that Plaintiffs had probable cause to file their Complaint against Defendant; instead, Defendant simply ignores Plaintiffs' argument that they had probable cause. Further, courts all across the country have found that identification by an ISP is sufficient probable cause to file a complaint. *See* Opening Brief, p 11 n.7.

In fact, in *Atlantic Recording Corp., et al. v. Raleigh*, Civ. No. 4:06-CV-1708 CEJ (E.D. Mo. August 18, 2008), the court, in a similar case, held that the recording company plaintiffs were entitled to *Noerr-Pennington* immunity because they had sufficient probable cause to initiate a claim of copyright infringement against the defendant. As a result, the defendant's counterclaims were dismissed. *See id.* at 7-9 (attached as Exhibit A). In *Raleigh*, the defendant did not dispute that the recording company plaintiffs had discovered infringing activity occurring

from a computer that the defendant could access. Instead, the defendant contends that the recording company plaintiffs could not establish she was responsible for the infringing conduct because her “computer [] was not password-protected, and this any one of [the sorority] house’s residents could have used her computer to engage in unlawful infringement.” *See id.* at 8.

Despite the defendant’s arguments, the court in *Raleigh* specifically found that the “defendant’s denial that she personally engaged in any wrongdoing [was] not sufficient to bar [the] action by plaintiffs . . . [and] that the plaintiffs’ action does not fall within the “sham” exception to the *Noerr-Pennington* doctrine.” *Id.*

Defendant also ignores Plaintiffs’ argument that this is not sham litigation because plaintiff record companies, including some of the Plaintiffs in this action, have prevailed in numerous cases with allegations similar to those asserted in the Complaint. *See* Opening Brief, p.12 The U.S. Supreme Court specifically found that “[a] winning lawsuit is by definition a reasonable effort at petitioning for redress and therefore not a sham.” *See Professional Real Estate*, 508 U.S. at 62 n. 5. In footnote eight of their Opening Brief, Plaintiffs cite to a number of other similar cases in which the plaintiff recording companies have prevailed on similar claims, establishing that, given the plaintiff recording companies’ success, Plaintiffs’ Complaint is not objectively baseless. *See* Opening Brief, p. 12 n.8.

Defendant also contends, without support, that Plaintiffs’ Complaint is objectively baseless because of (1) an allegedly flawed investigation; (2) an alleged improper motive; (3) improper use of the “John Doe” process; and (4) that Plaintiffs’ Complaint is allegedly generic and Plaintiffs often dismiss their cases. Despite Defendant’s arguments to the contrary, these conclusory allegations do not establish that Plaintiffs’ Complaint for copyright infringement was objectively baseless. None of Defendant’s allegations refute Plaintiffs’ argument that they had

probable cause for filing their Complaint against Defendant or that in similar actions Plaintiffs frequently prevail. Instead, Defendant's allegations do little more than show the conclusory nature of Defendant's Counterclaim and the lack of any factual allegations which would raise Defendant's allegations above the speculative level.

Because none of the conclusory allegations made by Defendant establish that Plaintiffs' Complaint is objectively baseless, the Court need not even consider the second prong of the sham litigation test. *See Professional Real Estate*, 508 U.S. at 60-61 ("Only if challenged litigation is objectively meritless may a court examine the litigant's subjective motivation.") However, even if Defendant could establish Plaintiffs' Complaint is objectively baseless, Defendant cannot establish the second prong of the sham litigation test.

2. By Ignoring the Second Prong of the Sham Litigation Test, Defendant Concedes that Plaintiffs' Copyright Infringement Action is Not an Attempt to Interfere Directly With a Competitor.

If Defendant could establish that Plaintiffs' Complaint for copyright infringement was objectively baseless, he would then have to meet the second prong of the sham litigation test. To do that, Defendant would have to show that Plaintiffs' purpose in bringing the suit was to interfere with the business relationship of a competitor. Defendant, however, completely ignores this second prong in both his Counterclaim and his Opposition Brief. Defendant makes no allegations suggesting that Plaintiffs' motive is to interfere with Plaintiffs' competitors. In fact, as previously set forth in Plaintiffs' Opening Brief, he cannot do this because Defendant is not a competitor of Plaintiffs and Defendant has not identified any other competitor with whom Plaintiffs' lawsuit was intended to interfere. *See* Opening Brief, p. 12-13. Accordingly, Defendant fails to establish the second prong of the sham litigation test, and in turn, cannot establish that Plaintiffs' Complaint for copyright infringement is sham litigation.

Therefore, Plaintiffs' actions are protected by *Noerr-Pennington* immunity and Defendant's Counterclaims for abuse of process (Count III), defamation (Count IV) and civil conspiracy (Count VI) must be dismissed.

B. Plaintiffs' Alleged Conduct is Protected by the Pennsylvania Doctrine of Judicial Immunity.

The Pennsylvania doctrine of judicial immunity provides that "[a]ll communications pertinent to any stage of a judicial proceeding are accorded an absolute privilege which cannot be destroyed by abuse." *Taliaferro v. Darby Township Zoning Bd.*, 2008 U.S. Dist. LEXIS 39478, *32 n.10 (E.D. Pa. May 15, 2008) (citing *Binder v. Triangle Pub., Inc.*, 275 A.2d 53, 56 (Pa. 1971)). Defendant's only response is reliance on the Ninth Circuit's decision in *Theofel v. Farey-Jones*, 359 F.3d 1066, 1078-79 (9th Cir. 2003), which is inapplicable as it does not deal with any state's litigation privilege. Defendant also contends, without any support authority, that Pennsylvania's doctrine of judicial immunity is determined by whether or not *Noerr-Pennington* immunity applies.

In *Theofel*, the defendant, in a separate litigation matter, served an overbroad subpoena to a third-party, Theofel, after the defendant was specifically instructed to "avoid imposing undue burden." *See Theofel*, 359 F.3d at 1071. After receiving the subpoena, Theofel provided defendant a sampling of the responsive documents. *Id.* The defendant did not notify the plaintiffs of Theofel's response to the subpoena and defendant proceeded to review the documents produced, most of which were unrelated to the pending litigation and were privileged or personal. *Id.* Once the defendant's conduct was revealed, the court found that the defendant acted in bad faith. *Id.* at 1072. Later, Theofel initiated an action against the defendant. The defendant argued that it was immune from suit under *Noerr-Pennington*. *Id.* at 1078. The defendant did not, however, assert its conduct was subject to a state litigation privilege similar to

the Pennsylvania judicial immunity doctrine. In fact, the court in *Theofel* did not even consider whether a finding that conduct is “objectively baseless” bars application of a state litigation privilege. Therefore, Defendant’s reliance on *Theofel* to support his argument that Plaintiffs are not entitled to immunity under Pennsylvania’s judicial immunity doctrine is simply misplaced.

Finally, Defendant relies on *Theofel* to suggest that Plaintiffs’ pre-suit litigation activities are not subject to either *Noerr-Pennington* immunity or Pennsylvania’s judicial immunity. The court in *Theofel*, while commenting on this issue, did not actually decide this question. The *Theofel* court questioned, in dicta, whether *Noerr-Pennington* immunity would apply to serving a third-party subpoena; however, the *Theofel* court did not actually answer this question. *Theofel*, 359 F.3d at 1078-79. Contrary to Defendant’s assertion, *Theofel* did not specifically decide whether a subpoena could be subject to *Noerr-Pennington* immunity or a state litigation privilege. *See id.* Defendant fails to cite to any authority contradicting Plaintiffs’ extensive authority that their alleged pre-suit activity is subject to immunity under both *Noerr-Pennington*, *see* Opening Brief at p. 8 n.6, and Pennsylvania’s doctrine of judicial immunity. *See* Opening Brief, p. 14. This argument, however, was specifically rejected in *Raleigh* where the court found that the recording company “plaintiffs’ filing of lawsuits against “Doe” defendants, *ex parte* discovery, efforts to settle their claims with defendants, and request for damages within the statutory range [was] conduct incident to the underlying litigation” and therefore subject to *Noerr-Pennington* immunity. *See Raleigh*, Civ. No. 4:06-cv-01708 CEJ, 9 (Ex. A).

Accordingly, Defendant's Counterclaims should be dismissed as Plaintiffs are entitled to immunity under the Pennsylvania doctrine of judicial immunity and that immunity, as well as *Noerr Pennington* immunity, extends to Plaintiffs' pre-suit litigation activities.

III. PLAINTIFFS' MOTION TO DISMISS SHOULD BE GRANTED BECAUSE EACH OF DEFENDANT'S SIX COUNTERCLAIMS FAILS TO STATE A CLAIM FOR RELIEF.

A. Defendant Fails to Show he Adequately Pled the Elements of Trespass to Chattels or a Violation of the Computer Fraud and Abuse Act.

Defendant's allegations in his Counterclaims and Opposition Brief are insufficient to establish a claim of trespass to chattels or a violation of the Computer Fraud and Abuse Act ("CFAA"). With respect to his trespass claim, Defendant argues that Plaintiffs accessed Defendant's computer, without Defendant's consent, and that as a result Defendant was denied "use and possession" of his computer.¹ See Counterclaim, ¶ 26; Defendant's Opposition, p. 9-10. Defendant's conclusory allegations of trespass, however, do not adequately allege that Defendant was dispossessed of his computer or that Plaintiffs interfered with Defendant's use of his computer. See *Pestco v. Associated Products, Inc.*, 2005 PA Super 276, ¶ 17; 880 A.2d 700 (citing RESTATEMENT 2D TORTS § 217). Defendant also argues that Plaintiffs violated the Computer Fraud and Abuse Act ("CFAA") because Plaintiffs accessed Defendant's computer without Defendant's consent, resulting in damage to Defendant exceeding \$5,000. Neither do Defendant's allegations that Plaintiffs violated the CFAA adequately allege that Defendant was damaged or suffered loss as a result of Plaintiffs' allegedly unauthorized access of Defendant's computer.

¹ Defendant also contends that his Trespass to Chattels claim should stand because of the court's decision in *UMG Recordings, Inc. v. Del Cid*, No. 8:07-CV-368-T-26 (TGW) (M.D. Fla. Sept. 19, 1997). Defendant makes the same argument with respect to his Computer Fraud and Abuse Act claim and his claim of civil conspiracy. However, Plaintiffs have already established that this Court is not bound by the court's holding in *Del Cid*, and that *Del Cid* was incorrectly decided because the court failed to apply the pleading standard adopted by the U.S. Supreme Court in *Twombly*. See Opening Brief, p. 32-33. Therefore, this Court should not uphold Defendant's Counterclaims simply because they were upheld by a district court in Florida.

As previously argued in Plaintiffs' Opening Brief, Defendant's conclusory allegations that he was denied "use and possession" of his computer are insufficient under *Twombly*. See Opening Brief, p. 14-16. Defendant makes no allegations specifically identifying when the trespass occurred; that Defendant knew of and was aware of the alleged trespass when it occurred; exactly how Plaintiffs' alleged trespass interfered with Defendant's "use and possession"; or the length of the trespass. Because Defendant fails to allege any of these specific facts regarding his claim of trespass to chattels, he fails to raise his right to relief above the speculative level. Simply stating that Defendant was denied the use and possession of his computer is nothing more than a formulaic recitation of the elements. *Twombly*, 127 S. Ct. at 1964-65. Accordingly, Defendant's claim of trespass to chattels should be dismissed.

Furthermore, even if Defendant could establish that Plaintiffs were not authorized to access Defendant's shared folder, Defendant has not adequately alleged "loss" or "damage" sufficient to state a violation of the CFAA. Defendant contends that by simply accessing his computer, Plaintiffs caused a "breach in the integrity of data... [sic] or system' . . . [and] such intrusion caused damages in an amount exceeding \$5,000." See Opposition Brief, p. 13. While, Defendant cites to *Shurgard Storage Centers, Inc. v. Safeguard Self Storage, Inc.*, 119 F. Supp.2d 1121, *Shurgard* does not stand for the proposition that merely alleging unauthorized access that causes damages in the amount of \$5,000 is enough to state a claim for violation of the CFAA. In *Shurgard*, the court held that while a plaintiff may not suffer any actual damages resulting from an unauthorized intrusion, if information is taken from the plaintiff's computer that would cause the plaintiff to suffer a "*loss*," exceeding \$5,000 the plaintiff would be entitled to relief. See *id.* (emphasis added.) Defendant has not, and cannot, allege that any information

allegedly “taken” caused Defendant to suffer loss, this is because the information allegedly “taken” was in his shared folder and accessible to the public for anyone to take.

Moreover, as a matter of law, Defendant’s trespass claim and claim for violation of the CFAA both fail because Defendant’s shared folder was open to anyone using the P2P network, including MediaSentry. *See* Opening Brief, p. 15, 18-19 and cases cited therein. But for Defendant authorizing others to use his shared folder, Plaintiffs would have been unable to discover Defendant’s infringing conduct. Defendant does not dispute this or provide any cases to the contrary.

Finally, Defendant’s allegations contain a fatal internal contradiction. Under the equitable doctrine of judicial estoppel, a party is precluded “from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position.” *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001). Here, Defendant denied that he infringed Plaintiffs’ copyrights, *see* Amended Answer, Affirmative Defenses and Counterclaims of John C. Kovalcik (“Answer”), p. 2, ¶ 9, and then proceeds to contend that he was incorrectly identified as the person responsible for the infringement at issue in the case by contending that he did not have a shared folder. *See id.* at p. 10, ¶ 19. Defendant’s counterclaims for trespass and violation of the CFAA, however, are premised on his being responsible for the infringement at issue. If Defendant did not use his computer to engage in illegal file sharing, as he alleges in his defense to Plaintiffs’ infringement claim, then he cannot now complain that Plaintiffs somehow trespassed or violated the CFAA when they observed him sharing files. Defendant cannot simultaneously allege that he “was” and “was not” sharing files. Accordingly, Defendant is judicially estopped from claiming that the record companies’ investigators accessed his computer in violation of his rights without

authorization, *see id.* at p. 10-11, ¶¶ 24 and 30, as opposed to accessing someone else's computer, when they located infringing music files. *See Hamilton*, 270 F.3d at 782. Defendant cannot have it both ways. He cannot claim that his computer was not used in the infringement at issue, and then claim that Plaintiffs improperly detected his infringement.

For all of these reasons, Defendant's purported counterclaim for trespass and violations of the CFAA fails as a matter of law and should be dismissed.

B. Plaintiffs Did Not Initiate Their Copyright Infringement Action to Harass Defendant, Therefore, Defendant's Abuse of Process Claim Should Be Dismissed.

The critical element to a claim of abuse of process is "the perversion of legal process to benefit someone in achieving a purpose which is not an authorized goal of the procedure in question." *Werner v. Plater-Zyberk*, 2002 PA Super 42, ¶ 15; 799 A.2d 776 (*citing Rosen v. American Bank of Rolla*, 627 A.2d 190, 192 (Pa. Super. Ct. 1993)). As established in Plaintiffs' Opening Brief, "[t]o satisfy the "perversion of process" element, the plaintiff must show "[s]ome definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process." *Taliaferro*, 2008 U.S. Dist. LEXIS 39478, *31 n.10 (citations omitted). Defendant simply does not, and cannot, point to a "definite act or threat" committed by Plaintiffs since initiating their copyright infringement action against Defendant that was not permitted by the process.

Defendant argues that Plaintiffs initiated their copyright infringement action to harass Defendant and to cause him financial and emotional injury, and that to initiate litigation for this purpose is improper under Pennsylvania law. *See* Opposition Brief, p. 13-14. The Defendant cites *Shiner v. Moriarty*, 706 A.2d 1228 (Pa. Super. Ct. 1998), for this proposition. However, as the Shiner Court explained, "there is no liability [for abuse of process] where the defendant has

done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” *Id.* at 1236.

Moreover, the facts in this case are readily distinguishable from *Shiner*. In *Shiner*, the defendant “repeatedly raised [their claims] without any expectation of success and the opinions of the various judges clearly advised both attorneys and clients that further litigation was meritless and unwarranted.” *See id.* at 1236 (Pa. Super. Ct. 1998). From that, the court in *Shiner* found that the jury could properly infer that the defendant’s primary motivation was to harass the plaintiffs “and not to preserve the leasehold and avoid eviction.” *See id.* Unlike the plaintiff in *Shiner*, Defendant cannot establish that Plaintiffs had any purpose other than to enforce and protect the exclusive rights granted them under the Copyright Act. As the Court explained in a similar case *Atlantic Recording Corp., et al. v. Heslep*, No. 4:06-cv-132-Y, 2007 U.S. Dist. LEXIS 35824, at *4-5 (N.D. Texas May 16, 2007) (attached as Exhibit A to the Opening Brief):

The Court rejects [defendant]’s characterization of this lawsuit, and many others like it, as “predatory.” Plaintiffs’ attorneys brought this lawsuit not for purposes of harassment or to extort [defendant] as she contends, but rather, to protect their clients’ copyrights from infringement and to help their clients deter future infringement For now, our government has chosen to leave the enforcement of copyrights, for the most part, in the hands of the copyright holder. *See* 17 U.S.C. § 101, *et seq.* Plaintiffs face a formidable task in trying to police the internet in an effort to reduce or put a stop to the online piracy of their copyrights. . . . The right to come to court to protect one’s property rights has been recognized in this country since its birth.”

In fact, Defendant only asserts conclusory, self-serving allegations that Plaintiffs initiated their copyright infringement action for any other purpose besides enforcing its copyright. Defendant does not allege a “definite act or [specific] threat” that Plaintiffs made to Defendant capable of supporting an abuse of process claim.

In addition, Defendant contends that “Plaintiffs used the threat of expensive and personal intrusion incidental to litigation . . . [de]spite Plaintiffs’ knowledge that they knew they never observed Kovalcik downloading music.” *See* Opposition Brief, p. 14. The first problem with this conclusory allegation is that actual observation of Defendant sitting at a computer downloading music is not necessary to state a claim, or later prove, copyright infringement. Plaintiffs’ evidence establishes a prima facie case of infringement. *See* Opening Brief, p. 11-12, and n.7. The second problem is that Defendant fails to allege when Plaintiffs made these alleged threats; how often the alleged threats were made; and any specifics regarding the nature of the threats that were allegedly made to Defendant. Simply alleging that Plaintiffs threatened Defendant, without more, is insufficient under *Twombly*. Finally, informing Defendant that if a resolution is not reached, litigation, which is inarguably expensive, will follow, cannot be a threat sufficient to form the basis of an abuse of process claim. *See Shiner*, 706 A.2d at 1236.

Defendant also argues that “Plaintiffs’ ultimate goal is to maintain, by illegal and improper means, their monopoly over the market for distributing music.” *See* Opposition Brief, p. 14. Again, Defendant fails to provide any support for this conclusory allegation. Defendant certainly does not identify what illegal and improper means Plaintiffs have used. Moreover, Plaintiffs, as copyright owners are provided the exclusive right of distribution under the Copyright Act. *See* 17 U.S.C. § 106. Therefore, it is entirely unclear how Plaintiffs’ efforts to enforce the rights granted to them under the Copyright Act through litigation can be considered a “perversion of the legal process.” *See Werner*, 2002 PA Super 42, ¶ 15

Because Defendant cannot establish that Plaintiffs used the “legal process against [Defendant] primarily to accomplish a purpose for which it was not designed,” *see Cruz v. Princeton Ins. Co.*, 2007 PA Super 152, ¶ 8; 925 A.2d 853 (citations omitted), and for the

reasons as set forth in Plaintiffs' Opening Brief, *see* Opening Brief p. 20-22, Defendant's abuse of process claim should be dismissed.

C. Defendant Did Not Allege Defamation Per Se and Did Not Adequately Allege Defamation, Therefore, Defendant's Defamation Claim Should be Dismissed.

Contrary to the arguments made by Defendant, Plaintiffs' communications with the University of Pennsylvania as part of Plaintiffs' "John Doe" proceeding were not defamatory per se, neither were they defamatory, and more importantly they were privileged. Furthermore, Defendant completely ignores Plaintiffs' argument that Defendant's defamation claim fails to state a claim because Defendant failed to plead special harm.² *See* Opening Brief, p. 25-26. Therefore, even if Defendant was able to establish that Plaintiffs' communications with the University of Pennsylvania were not subject to any privilege and were in fact defamatory, Defendant's claim of defamation would still fail because Defendant has not alleged special harm as required by statute. *See* 42 Pa.C.S. 8343(a).

To establish that Plaintiffs' communications with the University of Pennsylvania were defamatory, Defendant argues that it was defamation per se. In his Opposition Brief, Defendant correctly states that defamation per se is "a communication which ascribes conduct, character, or a condition that would adversely affect his fitness for the proper conduct of his business, trade, or profession . . ." *See Walder v. Lobel*, 488 A.2d 622, 627 (Pa. Super. Ct. 1985). But Defendant does not offer any explanation as to why Plaintiffs' communication with the University should be found to be defamatory per se.

Plaintiffs only communication with the University were related to Plaintiffs' subpoena, requesting the University of Pennsylvania identify the individual responsible for an IP address

² In addition, Defendant only identifies 5 elements to a defamation claim as established by Pennsylvania statute. *See* Opposition Brief, p. 14. This simply appears to be due to the fact that Defendant cites an older case. There are in fact 7 elements to a defamation claim, including special harm. *See* Plaintiffs' Brief, p. 23 (citing 42 Pa.C.S. 8343).

that had been used to infringe their copyrighted sound recordings. *See* Plaintiffs' Opening Brief, p. 24-25. At the time the subpoena was issued, Plaintiffs did not know the identify of the alleged infringer. It was the University, not Plaintiffs, who identified Defendant as the individual responsible for the IP address. Plaintiffs' request that the University identify Defendant does not affect Defendant's "fitness for the proper conduct of his business, trade or profession." *See Walder*, 488 A.2d at 627. Defendant has not even argued that he has a "business, trade or profession" that has been adversely affected by Plaintiffs' communications with the University. Accordingly, Defendant has not, and cannot, allege defamation per se.

Next, Defendant contends that Plaintiffs admit their Complaint against Defendant was "communicated" to the University. Plaintiffs are uncertain whether Defendant is referring to Plaintiffs' initial John Doe Complaint or the amended Complaint naming Defendant. Moreover, whether the University received a copy of the initial or amended Complaint is irrelevant as the statements made in Defendant's Complaint are absolutely privileged under Pennsylvania's doctrine of judicial immunity and cannot be the basis for Defendant's defamation claim. *See Pelagatti v. Cohen*, 536 A.2d 1337, 1343 (Pa. Super. Ct. 1987); *Smith v. Griffiths*, 476 A.2d 22, 24 (Pa. Super. Ct. 1984)("An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course . . . of, a judicial proceeding . . . if it has some relation to the proceeding."(citing Restatement (Second) of Torts § 586)).

Defendant also asserts that Plaintiffs defamed Defendant because "Plaintiffs have made countless other widely publicized statement and innuendo portraying those accused of copyright infringement as "pirates and thieves." *See* Opposition Brief, p. 15. Defendant does not allege that any of these alleged articles specifically identify Defendant by name. To establish a claim

of defamation, Defendant must show that the alleged defamatory statement was applied to Defendant. *See* 42 Pa.C.S. 8343(a). Defendant does not identify a single article in which Plaintiffs refer to Defendant as a pirate or thief, and Defendant cannot show that anyone reading these articles would have any reason to connect them to Defendant or believe that they applied to him.

Finally, Defendant did not allege special harm. *See* Opening Brief, p.25. Significantly, Defendant simply ignored this point in his Opposition Brief. By failing to respond to this argument, Defendant concedes Plaintiffs' argument that Defendant did not allege special harm and, therefore, failed to state a claim for defamation.

D. Defendant's Declaratory Judgment Claim Should Be Dismissed Because it is Duplicative of Plaintiffs' Claim of Copyright Infringement.

Defendant does not dispute the arguments made by Plaintiffs in their Opening Brief that "mirror image" counterclaims are routinely dismissed, nor does Defendant dispute Plaintiffs' contention that Defendant's Declaratory Judgment claim does not comport with the purpose of the Declaratory Judgment Act. *See* Opening Brief, p. 26-28. In fact, Defendant acknowledges that his claim is repetitive when he states that "the facts and legal questions are already at issue and no additional work need be done." *See* Opposition Brief, p. 16.

Instead Defendant simply argues that the Court should not dismiss Defendant's Declaratory Judgment claim because he has alleged that Plaintiffs "have a practice of voluntarily dismissing claims without prejudice, leaving the matter unsettled and subject to future litigation, and further depriving defendants of definite resolution of the matter." *See id.* Just how Defendant reached this conclusion is less than clear. Defendant does not identify any specific case, let alone several cases which would be needed to show a practice, where Plaintiffs dismiss

their claims leaving “matters unsettled.” This is the very type of conclusory allegation that the court in *Twombly* held would be insufficient to survive a motion to dismiss.³

E. Defendant Fails to Allege An Overt Act, Therefore, Defendant’s Civil Conspiracy Claim Should be Dismissed.

Defendant contends that he has alleged both an “illegal objective and illegal means,” therefore, he has adequately alleged a civil conspiracy claim. While Plaintiffs disagree, and pointed out the conclusory nature of these allegations, *see* Opening Brief, p. 31, the fundamental flaw in Defendant’s civil conspiracy claim is Defendant cannot identify an “overt act done in pursuance of the common purpose or design.” *See Lackner v. Glosser*, 2006 PA Super 14, ¶ 37, 892 A.2d 21 (citing *Grose v. Proctor & Gamble Paper Products*, 2005 PA Super 8, 866 A.2d 427, 440-41 (Pa. Super. 2005)(citations omitted)). Defendant completely ignores this critical element of a civil conspiracy claim.

The underlying causes of action identified by Defendant in his civil conspiracy counterclaim are violations of the Computer Fraud and Abuse Act and extortion in violation of the Hobb’s Act. Yet, Defendant has not alleged sufficient facts to support his claim that Plaintiffs’ alleged conduct violates either the CFAA or the Hobb’s Act. *See* Opening Brief, p. 29-31. Defendant still fails to allege any underlying tort, other than to argue that Plaintiffs allegedly admit that their alleged conduct was illegal, but dispute whether it was actionable and that this distinction does not justify a dismissal. *See* Opposition Brief, p. 17. First, Plaintiffs have not admitted that the alleged conduct is illegal and adamantly deny that it was. Moreover, whether the underlying torts identified in Defendant’s Counterclaim are actionable is crucial to establishing a claim of civil conspiracy. This is because “there can be no cause of action for civil

³ Defendant’s declaratory judgment claim should not survive based merely on Defendant’s rank speculation that this alleged “practice of voluntarily dismissing claims” occurs. Moreover, if Plaintiffs were to dismiss this claim with prejudice, the matter would be resolved.

conspiracy absent a cause of action for the underlying tort.” *See Buschel v. Metrocorp*, 957 F. Supp. 595, 599 (E.D. Pa. Sept. 17, 1996)(citing *Pelagatti v. Cohen*, 536 A.2d 1337 (Pa. Super Ct. 1987)). Plaintiffs already established that Defendant cannot adequately allege a violation of the CFAA or Hobb’s Act. Accordingly, Defendant’s claim for civil conspiracy should be dismissed.

IV. DEFENDANT IS NOT ENTITLED TO JUDICIAL NOTICE OF THE FACTS IDENTIFIED IN HIS OPPOSITION MEMORANDUM.

A. Judicial Notice is Not Appropriate Under FED. R. EVID. 201 Because the Material Defendant Seeks Judicial Notice of Is In Dispute.

Rule 201 of the Federal Rules of Evidence provides that “[a] judicially noticed fact must be one *not subject to reasonable dispute* in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by the resort to sources whose accuracy cannot reasonably be questioned.” *FED. R. EVID.* 201(b). Defendant requests that the Court take judicial notice of the following: (1) “MediaSentry could not determine the identity of an alleged infringer nor could they verify what computer, if any, was distributing copyrighted material;” (2) quotes from internet news articles and the decisions of other Courts in similar copyright infringement cases; (3) Defendant’s characterization of the holdings of copyright infringement cases in the Netherlands and Canada; and (4) Defendant’s characterization of why Plaintiffs and other Recording Company plaintiffs dismissed similar copyright infringement actions. Despite Defendant’s statement to the contrary, Defendant is not entitled to judicial notice of these “facts” because they are not “capable of accurate and ready determination by the resort to sources whose accuracy cannot reasonably be questioned.” *See id.*

“‘[A] high degree of indisputability is the essential prerequisite’ to taking judicial notice of adjudicative facts ‘Because the effect of judicial notice is to deprive a party of an opportunity to use rebuttal evidence, cross-examination, and argument to attack contrary evidence, caution must be used in determining that a fact is beyond controversy under [Federal

Rule of Evidence] 201(b).” *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1151 (9th Cir. 2005)(emphasis added). In fact, the Third Circuit has held that “[f]or all practical purposes, judicially noticing a fact is tantamount to directing a verdict against a party as to the noticed fact.” *LaSalle Nat’l Bank v. First Connecticut Holding Group*, 287 F.3d 279, 290 (3d Cir. 2002). Defendant has not established with a “high degree of indisputability” that MediaSentry could not identify an alleged infringer. Defendant is simply attempting to have the Court take judicial notice of his own conclusions regarding MediaSentry’s practices and the authorities that Defendant relies upon to support that conclusion.

Moreover, Plaintiffs’ Complaint and Motion to Dismiss dispute Defendant’s conclusions regarding Plaintiffs’ evidence, as well as Defendant’s conclusion that Plaintiffs knew MediaSentry could not identify an infringer. For this reason alone, Defendant’s conclusion regarding MediaSentry, as well as the article and cases Defendant cites to support this position are not facts which the Court can take judicial notice of under Rule 201(b).

Finally, the authorities Defendant cites to support his conclusion that the Plaintiffs cannot accurately identify infringers using MediaSentry are taken entirely out of context and are, therefore, not “sources whose accuracy cannot reasonably be questioned.” *FED. R. EVID.* 201(b).

B. The Material Defendant Seeks Judicial Notice of is Irrelevant and Taken Out of Context.

A review of the CNET News article cited to by Defendant makes it clear that the mistaken legal notice sent to Pennsylvania State University (“Penn State”) is entirely unrelated to the Plaintiffs’ efforts to detect copyright infringement on P2P networks. *See Declan McCullagh, RIAA apologizes for threatening letter*, May 13, 2003, available at http://news.cnet.com/2100-1025_3-1001095.html (attached as Exhibit B). Defendant does not, nor could he, establish that that alleged infringement against Penn State that resulted in a notice, not litigation, is even

analogous to Plaintiffs' Complaint of copyright infringement against Defendant. Most significantly, Defendant cannot show that evidence of alleged infringement in these two cases was obtained in the same manner. For this reason alone, this Court should not take judicial notice of the CNET News article.

Defendant's citation to the *O'Brien* Order to Show Cause ("OSC") was taken completely out of context and is irrelevant to the current dispute. On March 2, 2007, a district court judge in the Central District of California issued an OSC in *O'Brien*, a similar copyright infringement action to that asserted by Plaintiffs against Defendant. The reason the Court issued the OSC was to require the plaintiffs to explain why they joined an additional defendant. *See* Order to Show Cause, *Elektra Entmt. Group Inc. v. O'Brien*, Civil Action No. CV 06-5289 SJO (MANx) (C.D. Cal. March 2, 2007 (attached as Exhibit C). The plaintiffs explained to the Court that the additional defendant, Michael Tubman, was joined because he had been identified by the original defendant, Catherine O'Brien, as the actual infringer. The plaintiffs ultimately dismissed against Ms. O'Brien and pursued its claim against Mr. Tubman. The plaintiffs ultimately reached a settlement with Mr. Tubman. Contrary to Defendant's assertion, the court in *O'Brien* did not conclude that the plaintiffs' lawsuit was a sham or brought for an improper purpose.

Again, while Defendant asks the Court to take judicial notice of a single Southern District of California decision denying default judgment, that decision is irrelevant. *See Interscope Records v. Rodriguez*, Civ. No. 06cv2485-B (NLS), 3 (S.D. Cal. March 2, 2007) (attached as Exhibit D). First, the complaint that the Court in *Rodriguez* found to be insufficient under *Twombly*, is different from the Amended Complaint filed in this action against Defendant. The allegations in Plaintiffs' Complaint are substantially more detailed than the allegations in the *Rodriguez* complaint. *See Rodriguez* Complaint (attached as Exhibit E); Kovalcik Complaint

(attached as Exhibit F). Second, while the court denied default judgment under *Twombly*, the court did not determine that the plaintiffs' claim of copyright infringement was sham litigation. In fact, the court's decision in *Rodriguez* did not even address *Noerr-Pennington* or the sham exception.

Similarly, Defendant completely mischaracterizes the quote from Magistrate Judge Kravchuk in *Arista Records v. Does 1-27*, Civ. No. 07-162-B-W. In that case, several Doe defendants moved to dismiss the plaintiffs' complaint. The magistrate recommended that the court deny the defendant's Motion to Dismiss, but questioned, in a *footnote*, the plaintiffs' actions in joining numerous Doe defendants in a single action. *See Arista Records, LLC v. Does 1-27*, Civ. No. 07-162-B-W, 11-12 n.5 (attached as Exhibit G). Judge Kravchuk actually said, "I appreciate that increased costs may redound to the defendants' detriment eventually, but it is difficult to ignore the kind of gamesmanship that is going on here *with respect to joinder*." *See id.* Just as in *O'Brien* and *Rodriguez*, the Court in this proceeding did not discuss *Noerr-Pennington* immunity or the sham exception.

Finally, the Court should not take judicial notice of either the Dutch court's decision in *Brein Foundation v. UPC Nederland B.V* or the Canadian court's decision in *BMG Canada Inc. v. John Doe* because these cases involve different facts, different parties and were decided in different countries. The decisions in *Brein* and *BMG Canada* are not based on U.S. copyright law or the Federal Rules of Civil Procedure, therefore, this Court should not take judicial notice of either of those decisions. Moreover, for the same reasons, this Court should not even consider, or give any precedential value, to the decisions reached by the foreign courts in *Brein* and *BMG Canada*.

In *Brein*, the Dutch Court found that ISP's were not required to disclose the identity of their customer's based on Brein's evidence of infringement because Media Sentry did not obtain the infringing IP addresses in conformance with *Dutch data protection laws*. See *Brien*, ¶ 4.10 (attached as Exhibit H). In *BMG Canada*, the Canadian Federal Court upheld a lower courts ruling that *BMG Canada* had failed to establish that it was entitled to disclosure of the identity of the alleged infringers from their ISP based on the Canadian courts' discovery rules, however, this was not because, as Defendant contends, "that the 'evidence' gathered fails to establish even a prima facie case of infringement." See Opposition Brief, p. 4. In fact, the court rejected the lower courts ruling that *BMG Canada* was required to establish a prima facie case of infringement before an ISP would be required to disclose the identity of alleged infringers, and held instead that *BMG Canada* need only establish that they have a bona fide claim of infringement. See *BMG Canada Inc. v. John Doe*, 2005 FCA 193, ¶ 34 (2005)(attached as Exhibit I).

C. Dismissal of a Complaint Does Not Render the Recording Company Plaintiffs' Claims of Copyright Infringement Meritless.

Defendant contends that "RIAA-controlled member companies have filed and dismissed meritless cases after being forced to admit they had sued the wrong people." See Opposition Brief, p. 4. Defendant, however, offers no authority for its conclusion that dismissing a complaint renders the claims alleged therein to be meritless. Defendant also fails to identify any instance where recording company plaintiffs have admitted to suing the "wrong people." Plaintiffs do acknowledge that their have been instances where recording company plaintiffs have learned during the course of discovery that, in addition to the defendant, another individual(s) is also responsible for the alleged infringement. In these situations, the recording company plaintiffs do not always pursue their claims of infringement against all responsible

parties, and may elect, based on the evidence in any particular case, to only pursue the individual most culpable for the alleged infringement and dismiss their claims against others. However, dismissal in this instance does not render the recording company plaintiffs' claims of infringement against the "less" culpable defendant to be meritless. Accordingly, the Court should not take judicial notice of Defendant's contention that Plaintiffs "filed and dismissed meritless cases."

CONCLUSION

For all of the above reasons, Plaintiffs ask this Court to dismiss each of Defendant's counterclaims, and for such other relief as the Court deems just and necessary.

Dated: 8/20/08

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 20, 2008 a copy of the foregoing
**REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIMS** was served upon the Defendant via United States Mail
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