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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

INTERNATIONAL AUTOMATED SYSTEMS INC.; Plaintiff, vs. IBM; IBM CORPORATION; IBM PERSONAL COMPUTING DIVISION; LENOVO (UNITED STATES) INC.; LENOVO GROUP LTD.; UPEK, INC. and JOHN DOES 1-20; Defendants.	DEFENDANT UPEK'S OPPOSITION TO INTERNATIONAL AUTOMATED SYSTEMS, INC.'S MOTION TO DISMISS FOR LACK OF JURISDICTION ORAL ARGUMENT REQUESTED Case No.: 2:06-CV-00072-DB Judge: Dee Benson

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I. INTRODUCTION

After initiating and maintaining a frivolous lawsuit for more than two years and forcing defendant UPEK Inc. ("UPEK") to spend over a million dollars, plaintiff International Automated Systems ("IAS") is attempting to avoid this Court's summary judgment ruling holding the patent-in-suit invalid and UPEK's pending inequitable conduct summary judgment motion. IAS argues that its procedural ploy divests this Court of subject matter jurisdiction and prevents this Court from deciding UPEK's pending motion for inequitable conduct, which if successful, will result in this Court declaring the '474 patent unenforceable and awarding UPEK its attorney fees. IAS's transparent ploy to turn its frivolous lawsuit into a "no harm, no foul" event to avoid judgment on its fraud on the Patent Office has no merit. Indeed, IAS's ploy demonstrates that IAS understands the merits of UPEK's pending motions and wants to avoid Neldon Johnson's fraud on the Patent Office from coming to light.

The law does not allow IAS's ploy and the Court should deny IAS's motion. Litigants cannot deprive the Court of subject matter jurisdiction after the merits have been substantially litigated. Moreover, the Court of Appeals for the Federal Circuit has made it clear that even if the Court no longer has subject matter jurisdiction over IAS's frivolous infringement claims, it still maintains jurisdiction under 35 U.S.C. § 285 to determine that Neldon Johnson committed inequitable conduct, declare the patent-in-suit unenforceable and award UPEK its attorneys fees. *Monsanto Co. v. Bayer Bioscience*, 514 F.3d 1229, 1242-43 (Fed. Cir. 2008).

IAS filed this frivolous lawsuit in early 2006. IAS continued to pursue it even after UPEK told IAS that its lawsuit was frivolous and put IAS on notice that it would seek its attorney fees if IAS did not immediately dismiss its lawsuit. IAS refused. It was not until after this Court invalidated the patent-in-suit and UPEK and the other defendants had prevailed on the merits, that IAS offered to dismiss the case. (Dkt. No. 146 (*Dahle Declaration*), Ex. A) That was too late, as by then, IAS had forced UPEK to spend way too much to simply walk away.[1]

[1] It is important to note that extensive and expensive discovery took place in the *IAS v. UPEK* litigation.

Thus, UPEK filed its summary judgment motion for Neldon Johnson's inequitable conduct and motion for attorney fees under 35 U.S.C. § 285. In the face of these motions, IAS now moves to unilaterally dismiss UPEK's counterclaims in an effort to strip this Court of jurisdiction over UPEK's pending summary judgment motion.[2] In particular, IAS contends that a dismissal of its claims combined with a grant of a covenant not to sue divests this Court of jurisdiction over UPEK's counterclaims, including UPEK's pending summary judgment motion of inequitable conduct. (Dkt. 145 at 2, 4, Dkt. 142 at 2). In fact, IAS asks this Court to immediately take UPEK's summary judgment motion of inequitable conduct off-calendar or deny UPEK's motion as moot. Dkt. 142 at 2.

IAS's ploy to avoid judgment has no support in law. In both its attorneys' fees and summary judgment motions, UPEK requested this Court to find this case exceptional and award its attorney fees under 35 U.S.C. § 285 based on Neldon Johnson's inequitable conduct. Federal Circuit law is clear that a district court retains jurisdiction to rule on attorney fees under 35 U.S.C. § 285, which encompasses jurisdiction to make findings of inequitable conduct, even when the patents are no longer in suit. *Monsanto*, 514 F.3d at 1242-43. This jurisdiction is independent of the court's jurisdiction over the declaratory judgment counterclaims and is retained even when the patents are no longer in suit. *Id.* Thus, this Court retains jurisdiction over UPEK's motion for attorney fees and its motion for summary judgment of inequitable conduct under 35 U.S.C. § 285, irrespective of whether the Court has subject matter jurisdiction over UPEK's declaratory judgment counterclaims.

II. STATEMENT OF FACTS

1. IAS filed three different lawsuits in early 2006 alleging infringement of the '474 patent. This case was filed by IAS against Digital Persona.[3] Shortly thereafter, IAS filed a

[2] IAS concedes that this Court has jurisdiction to hear UPEK's pending motion for attorney fees and costs under 35 U.S.C. §285. (Dkt. 142 at 2, FN1).

[3] This action is styled as *International Automated Systems, Inc. v. Digital Persona, Inc.*, No. 2: 06cv00072 DB (C.D. Utah).

separate action against Microsoft Corporation,[4] which was subsequently consolidated with this action.

2. IAS also filed a separate action against IBM Corporation and Lenovo (the "IBM action"), which was assigned to Judge Jenkins.[5] After receiving indemnity demands from IBM and Lenovo, UPEK filed a lawsuit in California seeking a declaratory judgment that the '474 patent was not infringed and was invalid.[6] ("UPEK DJ Action") IAS then amended its Complaint in the IBM action in Utah to add UPEK as a defendant. The UPEK DJ Action was transferred to Utah and consolidated into the IBM action pending before Judge Jenkins. All litigation against IBM and Lenovo was stayed until IAS's claims against UPEK were resolved. This stay remains in effect.

3. Discovery commenced in IAS's action against UPEK in August 2006. IAS aggressively pursued discovery in the case, forcing UPEK to produce hundreds of thousands of pages, which dramatically increased the amount of attorneys' fees and costs incurred by UPEK.

4. On July 6, 2007, IAS proposed a settlement for an upfront payment by UPEK of over $4 million ($4,042, 370 to be exact) plus a 4% royalty on UPEK's future gross sales of the accused products. *See Declaration of Jeffrey A. Miller In Support of UPEK's Opposition To International Automated Systems, Inc.'s Motion To Dismiss For Lack Of Jurisdiction* ("*Miller Decl.*"), Ex. 1.[7] UPEK rejected this offer, telling IAS that its suit was baseless. UPEK also told IAS that if it did not immediately dismiss its case with prejudice and grant a covenant not to sue, UPEK would seek attorney fees and costs. *See Miller Decl.*, Ex. 2.

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[4] The IAS v. Microsoft case was styled as *International Automated Systems, Inc. v. Microsoft Corp*., No. 2:06cv00114 TC (C.D. Utah).

[5] The IAS v. IBM *et al.* case was styled as *International Automated Systems, Inc., v. IBM; IBM Corporation; IBM Personal Computing Division; Lenovo (United States) Inc.; Lenovo Group Ltd.; UPEK, Inc. And John Does 1-20*, No. 2:06-cv-00115 BSJ (C.D. Utah).

[6] The UPEK DJ Action was styled as *UPEK v. International Automated Systems, Inc.*, No. 3:06-cv-02237-CRB (N.D. Cal.)

[7] UPEK places this letter before the Court to provide context to UPEK's demand that IAS dismiss this case or face the consequences.

5. Fact discovery was scheduled to close on January 25, 2008 in the IBM action.

6. As outlined in UPEK's memorandum in support of its inequitable conduct summary judgment motion, UPEK learned of Johnson's inequitable conduct through documents produced to UPEK by the Securities and Exchange Commission. During the SEC's litigation against IAS and Johnson and the preceding investigation, IAS produced documents relating to IAS's fingerprint technology. Evidence relating to Neldon Johnson's inequitable conduct was contained in this document production. UPEK deposed Neldon Johnson, the named inventor of the '474 patent on October 24, 2007, which confirmed Neldon Johnson's inequitable conduct. On November 16, 2007, UPEK amended its answer and added a counterclaim for declaratory judgment that the '474 patent is unenforceable due to inequitable conduct during prosecution of the patent by its inventor Johnson. (Dkt. No. 132).

7. In this action involving IAS and Digital Persona/Microsoft, the Court ordered claim construction proceedings to take place prior to fact discovery. On January 3, 2008, this Court issued an order invalidating all the claims of the '474 patent for failing to satisfy various requirements of 35 U.S.C. § 112. (Dkt. No. 79).

8. On January 9, 2008, after learning that another case was pending in this district involving the same patent, Judge Jenkins issued an order consolidating IAS's action against UPEK (as well as the stayed claims against IBM and Lenovo) with this case. (Dkt. No. 80)

9. Digital Personal and Microsoft have since been dismissed from this action.

10. IAS's notice of appeal to the Court of Appeals for the Federal Circuit, challenging the summary judgment of invalidity of the '474 patent was dismissed on April 8, 2008, because final judgment had not been entered yet by the district court.

11. On June 21, 2008, UPEK filed its motion for summary judgment that the '474 patent is unenforceable due to inequitable conduct and the case was exceptional under 35 U.S.C. § 285 and its motion for attorney fees and costs. (Dkt. No. 115 and Dkt. No. 119).

III. ARGUMENT

A. IAS's Dismissal Of Its Claims and Covenant Not to Sue Does Not Divest This Court's Jurisdiction Over UPEK's Pending Motions And Its Counterclaims.

IAS argues that the dismissal of its claims combined with its grant of a covenant not to sue strips this Court of jurisdiction over UPEK's counterclaims, including its pending motion for summary judgment of inequitable conduct. (Dkt. 145 at 4, Dkt. 142 at 2) IAS is wrong.

1. This Court Has Jurisdiction To Determine Attorney Fees Which Encompasses Jurisdiction To Determine Inequitable Conduct Under 35 U.S.C § 285.

In both its summary judgment and attorneys' fees motions, UPEK requested the Court find this case exceptional under 35 U.S.C. § 285 based on Neldon Johnson's inequitable conduct during prosecution of the patent-in-suit.[8] Federal Circuit law unambiguously holds that a district court retains jurisdiction to rule on attorney fees under 35 U.S.C. § 285, which encompasses jurisdiction to make findings of inequitable conduct, even when the patents are no longer in suit or the court has been divested of subject matter jurisdiction. *Monsanto*, 514 F.3d at 1242.

In *Monsanto*, Monsanto sought declaratory judgment that four Bayer patents were invalid and unenforceable. Bayer counterclaimed, alleging Monsanto's infringement of those four patents. Subsequently, Bayer dismissed all claims and filed a covenant not to sue with respect to three of the four patents. After trial was held on the fourth patent, which was found invalid and not infringed, the district court held a bench trial regarding inequitable conduct relating to *all four patents*, even the patents that had been dismissed from the case via the covenant not to sue. After the bench trial, the district court found inequitable conduct in the prosecution of *all four patents*, awarded attorney fees, and held *all four patents* unenforceable, including *the three patents that were no longer in suit*. Rejecting Bayer's argument that the district court lacked jurisdiction to hold the three patents subject to the covenant not to sue unenforceable, the court stated:

> The question facing the court is, thus, whether a district court's jurisdiction under § 285 to determine whether there was inequitable conduct in the prosecution of

[8] As discussed in detail in UPEK's motion for attorneys' fees (Dkt. 119), Neldon Johnson's inequitable conduct is only one of the reasons why UPEK should be awarded its attorneys' fees.

> patents that are otherwise no longer in the suit confers on that court the jurisdiction to hold such patents unenforceable for inequitable conduct. We hold that it does.

Id. at 1243. Just as in *Monsanto*, this Court's jurisdiction over UPEK's summary judgment motion is independent of the court's jurisdiction over UPEK's declaratory judgment counterclaims and is retained even if IAS's patent is no longer in suit. *Id.* This means that IAS's ploy to avoid the consequences of Neldon Johnson's inequitable conduct must fail.

IAS cites to *Samsung Elecs. Co. v. Rambus, Inc.*, 398 F. Supp. 2d 470 (E.D.Va. 2005), to support its contention that UPEK's inequitable conduct summary judgment motion is moot. (Dkt. 142 at 2) Contrary to IAS's assertion, *Samsung* holds the exact opposite. The *Samsung* court held that the Rambus covenants did not divest the Court of jurisdiction over Samsung's motion for attorneys' fees and costs under Section 285.[9] *Id.* at 483-484. Moreover, the district court in *Rambus* recognized that it maintained jurisdiction over claims for inequitable conduct made under Section 285. *Samsung*, 398 F. Supp. 2d at 483. Thus, even under *Samsung*, IAS's covenant not to sue does not moot UPEK's summary judgment motion for inequitable conduct.

IAS also argues that the following cases support its contention that this Court should immediately address the issue of subject matter jurisdiction *sua sponte* and take UPEK's pending summary judgment motion for inequitable conduct off calendar or deny it as moot: *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 131 n. 1 (1995), *Hardiman v. Reynolds*, 971 F.2d 500, 502 (10th Cir. 1992), and *Tafoya v. U.S. Dep't of Justice*, 748 F.2d 1389, 1390 (10th Cir. 1984). (Dkt. No. 142 at 2). IAS appears to suggest that this Court should dismiss UPEK's counterclaims before UPEK has had an opportunity to be heard. The cases cited by IAS do not support such a proposition. In fact, in *Hardiman*, which involved a dismissal by a district court in a criminal case, the tenth circuit held that "[p]rior to dismissing an action *sua sponte*, a court must give the complainant an opportunity to respond to the argument for dismissal." *Hardiman*,

[9] The district court held that it retained jurisdiction to find the case exceptional and award attorney fees under 35 U.S.C. 285, even though Rambus had offered to pay the entire amount of attorney fees in dispute. Federal Circuit reversed and held that when Rambus offered to pay Samsung's requested attorney fees, the case before the district court became moot. *Samsung Elecs. Co. v. Rambus, Inc.*, 523 F.3d 1374 (Fed. Cir. 2008). IAS has not offered to pay UPEK's attorney fees, therefore, the dispute here is not moot.

971 F.2d at 505. In *Things Remembered*, the Supreme Court dealt with the jurisdiction of a federal appellate court to review district court orders regarding remand of bankruptcy cases to state court and in *Tafoya*, the tenth circuit determined whether federal courts had jurisdiction over claims for survivor's death benefits under Public Safety Officers' Benefit Act. None of these cases are applicable here.

In sum, even if this Court no longer has jurisdiction over UPEK's counterclaims, the Court still retains jurisdiction under 35 U.S.C. § 285 to find that Neldon Johnson committed inequitable conduct, award UPEK its attorneys' fees and costs and to declare the '474 patent unenforceable.

2. This Court Also Has Subject Matter Jurisdiction Over UPEK's Counterclaims.

Contrary to IAS's assertion, the cases cited by IAS do not compel dismissal of UPEK's counterclaims. A covenant not to sue granted by the patentee does not necessarily extinguish a court's jurisdiction over all declaratory judgment counterclaims. There is no precise test applicable to every case seeking declaratory relief. Instead, the court must examine the facts and circumstances of each case to determine if jurisdiction exists. *Sony Electronics v. Guardian Media Technologies, Ltd.*, 497 F.3d 1271, 1283 (Fed. Cir. 2007). Indeed, the Federal Circuit recognizes that there are situations where a patentee cannot divest the district court of subject matter jurisdiction by unilaterally dismissing its claims and filing a covenant not to sue. *See Fort James Corp. v. Solo Cup Co.,* 412 F.3d 1340, 1348 (Fed. Cir. 2005), discussed below.

This Court has already granted summary judgment of invalidity with respect to the '474 patent. IAS cites no authority supporting its contention that a patentee can divest subject matter jurisdiction of defendant's counterclaims by unilaterally dismissing its claims and filing a covenant not to sue after its patent has been invalidated by the Court. In all the cases IAS cites where the court granted a dismissal, the patentee sought to dismiss its claims and defendants' counterclaims by filing a covenant not to sue *before a determination of invalidity or infringement* was made. In *Benitec Austl., Ltd. v. Nucleonics, Inc.*, 495 F.3d 1340, 1347 (Fed. Cir. 2007), the

patentee sought to dismiss its complaint after it concluded it no longer possessed a viable infringement claim. No findings had been made with regard to infringement or invalidity. In *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc.*, 248 F.3d 1333, 1338 (Fed. Cir. 2001), the patentee filed a motion to dismiss along with a covenant not to sue when no determination had been made as to infringement or validity. In *Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 1055-56 (Fed. Cir. 1995), the patentee dismissed its infringement claim and unconditionally agreed not to sue when summary judgment motions for invalidity and non-infringement were pending but prior to any determination having been made. Finally, in *Furminator, Inc. v. Ontel Products Corp.*, 246 F.R.D. 579, 582 (E.D.Mo 2007), the patentee sought to dismiss all claims and counterclaims after a summary judgment for invalidity was filed but not yet ruled on.

In contrast, in *Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340 (Fed. Cir. 2005), after a non-infringement jury verdict, the patentee filed a covenant not to sue along with a motion to dismiss, which the district court granted. The Federal Circuit reversed, holding that the patentee's promise not to sue did not moot defendant's inequitable conduct counterclaim. *Id*. at 1348. The Federal Circuit held that the post-verdict covenant had no effect on patentee's claim for infringement because that controversy had already been resolved. *Fort James* is analogous to the present case, as this Court has already granted summary judgment of invalidity with respect to the '474 patent. As in *Fort James*, IAS's covenant not to sue comes too late to have jurisdictional effect because the court has invalidated the patent and the controversy has been resolved.

Arguing that *Fort James* does not control here, IAS misconstrues *Fort James* and its treatment in *Benitec.* Contrary to IAS's argument, the court in *Benitec* did not so narrowly limit the holding of *Fort James* to apply only when there had been a non-infringement verdict. The court merely distinguished the setting in *Benitec* from *Fort James*:

> The instant setting is different because no trial of the infringement issue has taken place. *Benitec* instead had its claims dismissed at its request before a trial and the considerable effort connected therewith had taken place.

In fact, this language makes clear that the *Benitec* court was distinguishing dismissal motions made early in a case (as in *Benitec*) from dismissal motions made late in a case, such as after summary judgment or trial, at which point considerable efforts had been expended. Here, this dispute has been extensively litigated for over two years by various defendants. UPEK alone has been forced to spend over a million dollars. This Court has now invalidated the patent-in-suit. As the Federal Circuit held in *Fort James*, litigants cannot deprive the Court of subject matter jurisdiction after the merits have been substantially litigated and the controversy has been resolved. As in *Fort James*, IAS's covenant not to sue comes too late to have jurisdictional effect because the court has already determined the issue of validity after substantial litigation, thus resolving the controversy.

B. Denial Of Dismissal Is Particularly Appropriate Here Because IAS And Its Founder and CEO Neldon Johnson Have A History of Bringing Baseless Lawsuits.

Regrettably, IAS and its Founder and CEO Neldon Johnson have a long history of filing frivolous lawsuits and then either using procedural ploys to avoid being held accountable for their abuse of the judicial system or litigating until it can no longer sustain the frivolous claim and then dismissing the cases. In fact, Neldon Johnson has been involved in forty four cases in the State of Utah in the past two decades. *See Miller Decl.*, Ex. 3.

IAS and Neldon Johnson have filed more than ten lawsuits in the past decade. Some of these lawsuits have also involved frivolous and lengthy appeals. It is noteworthy that neither IAS nor Johnson has prevailed in a single case. To impress upon the Court the gravity and extent of Plaintiff's abuse of the judicial system and defendants like UPEK, these cases with corresponding pleadings have been listed in the accompanying declaration. *See Miller Decl.,* ¶ 4- 30. The most egregious instances of IAS's abusive tactics are briefly discussed below:

1. IAS *et al*. v. Brooks Automation *et al*. (Case No. 040924818, Third District, State of Utah), Johnson v. Platt (Case No. 060918528, Third District, State of Utah), IAS *et al*. v. Platt (Case No. 06-10223, District Court, Texas), IAS *et al*. v. Platt (Case No. 2006CV6338, District Court, Colorado): IAS and its officers filed suit in the District Court of Utah against Brooks

Automation Inc. and others including former IAS employee Tracy Platt for *inter alia* defamation. *See Miller Decl.*, Ex. 4. Additionally, Neldon Johnson personally sued Platt for defamation in the District Court of Utah. Subsequently, Johnson dismissed his suit against Platt voluntarily. *See Miller Decl.*, Ex. 5. Platt obtained dismissal from the suit by IAS based on lack of personal jurisdiction on August 10, 2006. *See Miller Decl.*, Ex. 6. Then, IAS filed two more cases against Platt, one in the District Court of Texas and a second suit in the District Court of Colorado. *See Miller Decl.*, Ex. 7, Ex. 8. The lawsuit in Texas was dismissed on March 24, 2008 and the lawsuit in Colorado was dismissed on March 1, 2008. *See Miller Decl.*, Ex. 9, Ex. 10.

2. IAS *et al*. v. Brooks Automation *et al*. (Case No. 040924818, Third District, State of Utah): IAS also sued another former IAS employee Brian Watson for *inter alia* defamation. *See Miller Decl.*, Ex. 4. Watson counterclaimed under Utah's anti-SLAPP statute that the lawsuit was filed in retaliation for his cooperation with the SEC investigation of IAS's and Neldon Johnson's insider trading and defrauding of investors. *See Miller Decl.*, Ex. 11. To avoid plaintiff's depositions from being taken, and a judgment on the merits of defendant's counterclaims, IAS attempted the ploy of firing its counsel on the eve of the depositions and refusing to appear. *See Miller Decl.*, Ex. 12, Ex. 13. Watson sought and obtained a certificate of default against IAS and Neldon Johnson (which was later vacated) for failing to appoint counsel. *See Miller Decl.*, Ex. 14.

3. Neldon Johnson *et al*. v. Lindon City Police Department *et al*. (Case No. 2-02CV-449J, District Court, Utah): In another frivolous lawsuit, Johnson sued the Lindon City Police Department, Pleasant Grove City Police department and other individuals under 42 U.S.C. § 1983 and related causes of action. *Johnson v. Lindon City Corp.*, 405 F.3d 1065, 1069 (10th Cir. 2005); *See Miller Decl.*, Ex. 15. The facts that led to this frivolous lawsuit are as follows. Neldon Johnson and his son, another IAS corporate officer, were charged with misdemeanor assault after getting into a "fracas" with Neldon's son-in-law, who happened to be a police officer. Neldon Johnson and his son eventually signed Pleas in Abeyance and executed related

statements "in which they admitted that they attempted with unlawful force or violence to do bodily injury to Sgt. Smith and were guilty of assault." *Johnson*, 405 F.3d at 1067. After taking these positions in their criminal matter to avoid potentially more severe penalties, the Johnsons then initiated their civil rights action. The district court granted summary judgment for defendants. *Johnson*, 405 F.3d at 1067; *Miller Decl.*, Ex. 16, Ex. 17. Johnson appealed and the Tenth Circuit affirmed the district court's grant of summary judgment on the basis of judicial estoppel, finding that Plaintiff's argument was "nothing more than an intentional attempt to mislead the [federal courts] to gain an unfair advantage." *Johnson*, 405 F.3d at 1070.

4. Johnson v. Johnson: Neldon Johnson filed three appeals, resulting in three Utah Court of Appeals decisions stemming from his divorce from his ex-wife, Ina Bodell. The first two involve his failed attempts to disqualify the trial judge. *Johnson v. Johnson*, 2004 Utah App. LEXIS 189 (Utah Ct. App. January 29, 2004); *Johnson v. Johnson*, 2004 Utah App. LEXIS 209 (Utah Ct. App. July 22, 2004). In his third appeal, Johnson appealed a variety of trial court decisions, including the grant of property his ex-wife received as part of a stipulated property settlement in the divorce agreement. The court of appeals denied all of them. *Johnson v. Johnson*, 2007 Utah App LEXIS 279 (Utah Ct. App. August 9, 2007). Further, the Court of Appeals affirmed trial court's use of contempt proceedings against Johnson to effectuate compliance with its orders and also affirmed trial court's award of attorney fees against Johnson. *Id.*

5. Johnson v. Laycock: Having failed to convince the Court of Appeals of the merits of his divorce case, Johnson resorted to suing The Honorable Claudia Laycock, the Judge who had handled his divorce proceedings. *Johnson v. Laycock*, 2007 Utah App. LEXIS 3 (Utah Ct. App. January 5, 2007). This suit was dismissed. Johnson appealed the dismissal and the Court of Appeals affirmed under the doctrine of judicial immunity on January 5, 2007. *Id.* Johnson filed petition for writ of certiorari which was denied by the Utah Supreme Court. *Johnson v. Laycock*, 168 P.3d 339 (Utah 2007).

6. Johnson v. Wasatch Land and Title Ins. Agency, Inc. (Case No. 070402786,

Fourth District, State of Utah): Despite having the merits of his case regarding the grant of property to his ex-wife adjudicated multiple times at the trial court and appellate level, and being told by the courts that his case had no merit, Johnson then sued the land and title insurance agency that had facilitated the transfer of property to his ex-wife under the divorce settlement for the same dispute. *See Miller Decl.*, Ex. 23.

7. IAS et al. v. Ina Bodell *et al*. (Case No. 040926797, Third District, State of Utah): In 2004, IAS and Johnson sued Johnson's ex-wife Ina Bodell and Donnel Johnson and Brenda Smith for conversion, damage to reputation and other related causes of action. This lawsuit was dismissed on July 29, 2008. *See Miller Decl.*, Ex. 24, Ex. 25.

8. IAS *et al*. v. John Does 1-100 (Case No. 040911871, Third District, State of Utah): Other examples of IAS's practice include its suit against John Does for inter alia defamation, which was dismissed for failure to serve. *See Miller Decl.*, Ex. 26-27.

IAS must not be allowed to use a procedural ploy to avoid being held accountable for its abuse of the judicial system and defendants.

IV. CONCLUSION

For the foregoing reasons, UPEK respectfully requests that IAS's motion to dismiss UPEK's counterclaims be denied.

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Dated: August 22, 2008

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