

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

SUSAN POLGAR,
Plaintiff,

V.

UNITED STATES OF AMERICA
CHESS FEDERATION, INC.
and
BILL GOICHBERG, JIM BERRY,
RANDY BAUER, and
RANDALL HOUGH, all Individually
and in their Representative Capacities as
Members of the Executive Board of the
United States of America Chess Federation;
BILL HALL, Individually and in his
Representative Capacity as Executive
Director of the United States of America
Chess Federation;
BRIAN MOTTERSHEAD;
HAL BOGNER;
CHESS MAGNET, L.L.C.;
CONTINENTAL CHESS INCORPORATED;
JEROME HANKEN;
BRIAN LAFFERTY;
SAM SLOAN;
KARL S. KRONENBERGER; and
KRONENBERGER BURGOYNE, L.L.P.;

Defendants.

**PLAINTIFF/COUNTER-DEFENDANT SUSAN POLGAR’S BRIEF IN SUPPORT OF
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER FED. R. CIV. P.
12(b)(6), OR IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE
STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE SAM R. CUMMINGS:

COMES NOW, **SUSAN POLGAR**, Plaintiff and Counter-Defendant herein, files this her *Brief in Support of Motion to Dismiss for Counter-Claimant's Failure to State a Claim Under Fed. R. Civ. Pro. 12(b)(6), or in the Alternative, Motion for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e)*, and shows the Court as follows:

INTRODUCTION

1. On September 10, 2008, Defendant Sloan filed his Answer to Polgar's Original Petition (originally filed locally in state court) and Counterclaim against Plaintiff. Sloan's Counterclaim fails to inform Plaintiff/Counter-Defendant Polgar why she is being sued. Furthermore, Sloan's Counterclaim fails to state a claim upon which relief can be granted. The Court should dismiss Sloan's Counterclaim in its entirety, or in the alternative, order Sloan to amend his Counterclaim with a more definite statement of the suit.

ARGUMENT

Rule 12 (b)(6) Motion to Dismiss

2. The Court has authority to dismiss a counterclaim for failure to state a claim upon which relief can be granted if the complaint fails to state factual allegations showing that the right to relief is plausible and rises above mere speculation. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965, 1974 (2007).

3. Each and every allegation set forth in Sloan's Counterclaim is tied to Internet postings by the "Fake Sam Sloan." In his Counterclaim, Sloan merely speculates as to the identity of the "Fake Sam Sloan;" he has not and cannot provide any facts to substantiate his speculation. In fact, in Paragraph 20 of Sloan's Answer, Sloan admits that it would be "impossible" to determine which

“Fake Sam Sloan” statements, if any, were made by Counter-Defendant Polgar. Sloan admits that it is not possible for him to prove Polgar made any statement, much less one of the statements that allegedly “caused permanent and irreparable harm to the name and reputation of Sam Sloan” or caused him “personal distress.”

4. In his Counterclaim, Sloan not only fails to state factual allegations showing the right to relief is plausible and rises above mere speculation, but he affirms that his factual allegations rise only to mere speculation due to the impossibility to discover the true source of the postings. Therefore, the Court should dismiss this case in accordance with Rule 12(b)(6) and *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965, 1974 (2007).

Supplement to Rule 12(b)(6) and Alternative Rule 12(e) Motion for a More Definitive Statement

5. In the alternative, a motion for a more definite statement is proper when a complaint is so vague or ambiguous that the defendant cannot reasonably prepare a response. Fed. R. Civ. P. 12(e); *Sisk v. Tex. Parks & Wildlife Dept.*, 644 F.2d 1056, 1059 (5th Cir. 1981). Subject to the Court’s ruling on Polgar’s Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6), the Court should, in the alternative, order that Counter-Claimant Sloan amend his Counterclaim with a more definite statement of the suit.

6. Sloan’s Counterclaim is so unintelligible that a responsive pleading cannot be crafted. The Counterclaim contains thirty paragraphs that vacillate between obscure biographical events, random unverified Internet postings, and defamatory statements about Polgar which fail to relate in any way to any claims Sloan may have against Polgar. After thirty paragraphs of nonsensical rambling, Sloan’s Counterclaim concludes with the nebulous claims of permanent and irreparable

harm to his name and reputation and personal distress. Sloan even goes as far as to ask the Court, in paragraph sixteen of his Answer, to compel from Polgar the production of a questionable DVD related to Polgar's divorce proceedings in New York. Sloan fails to plead any factual basis that would make said alleged DVD, if it existed, even relevant to his claims. Given the unintelligible and insupportable nature of Sloan's claims, Polgar remains unable to respond.

CONCLUSION

7. Even if all the facts claimed in Sloan's Counterclaim proved to be true, Sloan has still failed to provide factual allegations showing that the right to relief against Polgar is plausible. Because Sloan's Counterclaim fails to state a claim upon which relief can be granted, the Court should dismiss Sloan's Counterclaim, whatever it is, in its entirety, or in the alternative, the Court should order Sloan to amend his Counterclaim with a more definite statement of the suit.

Respectfully submitted,

KILLION LAW FIRM
2521 74th Street
Post Office Box 64670
Lubbock, Texas 79424-4670
(806) 748-5500 Telephone
(806) 748-5505 Facsimile

/s/ Samantha Peabody Estrello
James L. Killion
SBN: 11409100
Samantha Peabody Estrello
SBN: 24056112

Attorneys for Plaintiff and Counter-
Defendant Susan Polgar

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2008, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the ECF system of the Court. The ECF system sent a "Notice of Electronic Filing" to the following attorneys of record, all of whom have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Samantha Peabody Estrello

Samantha Peabody Estrello

William P. Huttenbach
HIRSCH & WESTHEIMER, P.C.
Bank of America Center
700 Louisiana, 25th Floor
Houston, Texas 77002-2772

**Attorneys for USCF, Kronenberger, Kronenberger Burgoyne, Hall, Hanken,
Hough, Goichberg, Continental Chess, Berry, and Bauer**

Bill LaFont
Brent Hamilton
LAFONT, TUNNELL, FORMBY, LAFONT & HAMILTON, L.L.P.
P.O. Box 1510
Plainview, Texas 79073-1510

**Local Counsel for USCF, Kronenberger, Kronenberger Burgoyne, Hall, Hanken,
Hough, Goichberg, Continental Chess, Berry, and Bauer**

Samuel H. Sloan, Pro Se
1664 Davidson Ave., Apt. 1B
Bronx, New York 10453
(917) 507-7226
(917) 659-3397
samhsloan@gmail.com

I hereby certify that I have served the foregoing document by mailing a copy to the following individuals:

Brian Mottershead
118 Nowell Farme Road
Carlisle, MA 01741

Brian Lafferty
111 Colton Place
Long Meadow, Massachusetts 01106

Hal Bogner
P.O. Box 143
Half Moon Bay, California 94019

Chess Magnet, L.L.C.
C/o Hal Bogner
P.O. Box 143
Half Moon Bay, California 94019

Via CMRRR No. 7005 0390 0004 8289 4955

Samuel H. Sloan, Pro Se
1664 Davidson Ave., Apt. 1B
Bronx, New York 10453

/s/ Samantha Peabody Estrello
Samantha Peabody Estrello