

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

ATLANTIC RECORDING CORP.,  
etc., et al.,

Plaintiffs,

v.

CASE NO: 8:08-cv-147-T-26EAJ

EVA BOYER,

Defendant.

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**ORDER**

Plaintiffs have filed a motion to dismiss Defendant's counterclaim. The counterclaim, with the exception of the claim for abuse of process, is a mirror image of the counterclaim filed in UMG Recordings, Inc., et al. v. Del Cid, case number 8:07-cv-368.<sup>1</sup> In that case, the Court upheld all of the counterclaims, except the one alleging a claim for copyright misuse,<sup>2</sup> in the face of a similar motion to dismiss.<sup>3</sup> And, although Plaintiffs now claim the Court was wrong in its decision because it did not take into

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<sup>1</sup> The Court notes that Plaintiffs' counsel in this case represented Plaintiffs in that case, and Defendant's counsel in this case represented Defendant in that case as well.

<sup>2</sup> Defendant in this case has instead alleged a claim for abuse of process, a claim which under Florida law may be instituted as a counterclaim See Blue v. Weinstein, 381 So.2d 308, 310-11 (Fla. Dist. Ct. App. 1980).

<sup>3</sup> See case number 8:07-cv-368, docket 23.

account the recent standard promulgated by the Supreme Court in Twombly v. Bell Atlantic Corp., 127 S.Ct. 1955 (2007), for judging the sufficiency of a complaint, a review of that order reflects otherwise. Consequently, because the Court has previously resolved all of the issues raised in Plaintiffs' motion to dismiss, and because the Court is not convinced that its prior decision was wrong, the Court needs no response from Defendant and the motion is due to be denied.

**ACCORDINGLY**, it is **ORDERED AND ADJUDGED** as follows:

- 1) Plaintiffs' Motion to Dismiss Defendant's Counterclaim (Dkt. 12) is denied.
- 2) Plaintiffs shall file their answer and defenses to the counterclaim within ten (10) days of this order.

**DONE AND ORDERED** at Tampa, Florida, on May 6, 2008.

*s/Richard A. Lazzara*  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

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Counsel of Record