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IN THE UNITED STATES DISTRICT COURT
FOR UTAH – CENTRAL DISTRICT

DEEP BLUE, a Nevada corporation,
ALEXANDER LINDALE, LLC, a Utah
limited liability company, and WILF BLUM,
an individual,

Plaintiffs,

vs.

EDWARD KRAJEWSKI, an individual, and
JOHN DOES 1-10, individuals.

Defendants.

**MOTION FOR SUMMARY
JUDGMENT**

Case: 2:08cv00405

Plaintiffs Deep Blue Marine, Inc. (“Deep Blue”), Alexander Lindale, LLC
 (“Alexander Lindale”), and Wilf Blum (“Blum”) by and through their counsel, Ivory
 Law, P.C., hereby submit their Motion for Summary Judgment against Defendant
 Edward Krajewski (“Krajewski”).

DATED this 9th day of October, 2008.

_____/S/
Kenneth R. Ivory
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 9, 2008, I caused the **MOTION FOR SUMMARY JUDGMENT** to be sent by US Mail and email to the following:

Email: happydiver12@yahoo.com
E_krajewski@comcast.net

and

Edward Krajewski
2140 Colony Rd.
Jamison, PA 18929

_____/S/
Kenneth R. Ivory, Esq.

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**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

Case: 2:08cv00405

Plaintiffs Deep Blue Marine, Inc. (“Deep Blue”), Alexander Lindale, LLC
 (“Alexander Lindale”), and Wilf Blum (“Blum”) by and through their counsel, Ivory
 Law, P.C., hereby submit their Memorandum in Support of Plaintiff’s Motion for
 Summary Judgment against Defendant Edward Krajewski (“Krajewski”).

UNDISPUTED MATERIAL FACTS

1. Plaintiff Deep Blue Marine, Inc., is a Nevada Corporation with

headquarters located in Midvale, Utah. Blum Aff. ¶¶ 2,3.

2. Plaintiff Wilf Blum is the CEO of Deep Blue. Blum Aff. ¶ 4.

3. Alexander Lindale, LLC is a Utah limited liability company that provides public relations services on an independent contractor basis to publicly traded companies. Blum Aff. ¶ 6.

4. Wilf Blum is the managing member of Alexander Lindale. Blum Aff. ¶ 7.

5. Deep Blue is a publicly traded company that engages in the business of the search and salvage of lost treasure and artifacts from shipwrecks. Blum Aff. ¶ 9.

6. The search for and salvage of shipwrecks and their treasure is a unique business that is sensitive in its nature and operations due to the regulation of permits and the competitive nature of locating and recovering shipwrecks and their contents. Blum Aff. ¶ 9.

7. Because locating an historical, prospective treasure site is often the most difficult part of salvage and treasure recovery, the location of a wreck is critically sensitive. Blum Aff. ¶ 11, i.

8. Wrecks are often in the waters of foreign countries. Blum Aff. ¶ 11, ii.

9. Permits from the appropriate governing authority are generally required to conduct salvage operations. Blum Aff. ¶ 11, iii.

10. Permits for salvage operations, especially when in the waters of foreign countries, are very much dependant upon personal relationships with foreign officials. Blum Aff. ¶ 11, iv.

11. The reputation of the salvage company and its principals is paramount to obtaining the required salvage and dive permits. Blum Aff. ¶ 11, v.

12. The fees for salvage permits are often based on sharing a percentage of recovered treasure with the permit issuing government entity. Blum Aff. ¶ 11, vi.

13. Obtaining and maintaining salvage and dive permits, especially in foreign waters, are highly dependent upon the reputation of trustworthiness and the business viability of the salvage company and its principals. Blum Aff. ¶ 11, vii.

14. Defendant Edward Krajewski was hired by Deep Blue as a contract employee and worked as an operations manager for Deep Blue from March 2006 to about April of 2007. Blum Aff. ¶ 28.

15. Krajewski signed an Employee/Contractor Non-Disclosure and Drug Free Agreement (“Agreement”) on October 10, 2006. Blum Aff. ¶ 30; Agreement, Exhibit A.

16. The Agreement signed by Krajewski contained, inter alia, the following terms:

1. That during the course of my employ/contract there may be disclosed to me certain trade secrets of the Company; said trade secrets consisting of but not necessarily limited to:
 - a. Technical information: Methods, processes, formulae, compositions, documents, discussions, plans, systems, techniques, inventions, equipment, tools, locations, discoveries, recovered materials, machines, computer programs and/or

research projects.

- b. Business information: Stockholder lists, inside information, sources of supply, financial data and marketing, contract amounts and/or salaries, corporate income, disbursements, expenditures, and/or merchandising systems or plans.

- 2. I agree that I shall not during, or at any time after the termination of my employment with the Company, use for myself or others, or disclose or divulge to anyone including future employees or employers, any trade secrets, confidential information, including but not exclusive to the above listed information, or any other proprietary data of the Company. To do so would be in violation of this agreement.

Agreement, Exhibit A.

17. Plaintiffs filed their Complaint in this action on May 20, 2008. Pl's Compl.

18. Krajewski filed his Answer on July 29, 2008. Def's Answ.

19. In his Answer, Krajewski answered "Neither Affirmed Nor Denied" to sixty-nine allegations of Plaintiff's Complaint. *Id.*

20. Those allegations of Plaintiff's Complaint to which Krajewski answered "Neither Affirmed Nor Denied" are as follows:

¶ 15. As operations manager for Deep Blue Marine, Krajewski had

access to proprietary information of Deep Blue.

¶ 17. Pursuant to the Non-Disclosure Agreement, Krajewski agreed that during the course of his employment, and after the termination of employment, he would not disclose trade secrets as defined in the Agreement.

¶ 19. Defendant Krajewski has and continues to publish statements on investment message boards of investment internet sites, including but not limited to Investorhub (“I-hub”) for Deep Blue Marine, I-hub for Oceanic research and Recovery, Inc., and golden Boards, which disclose proprietary information in violation of the Agreement.

¶ 22. Defendant Krajewski is a member on a number of internet investment message boards, including I-hub for Deep Blue Marine, I-hub for Oceanic Research and Recovery, Inc., and Golden Boards.

¶ 23. Defendant Krajewski posts on message boards under the name “capted”.

¶ 24. Defendant Krajewski also posts on message boards under the name “fubar”.

¶ 25. Plaintiff, Alexander Lindale, until May 16, 2008, had an independent contractor relationship with Copper King Mining Corporation to provide public relations services.

¶ 29. Plaintiff Wilf Blum has had business and consulting

relationship with Oceanic Research and Recovery.

¶ 30. Defendant Krajewski has posted more than 1500 messages about Plaintiffs on investment message boards.

¶ 33. Defendant also repeatedly alleges that Deep Blue and Blum are under SEC and federal “investigation.”

¶ 36. On or about June 13, 2007, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “Randy Champion. Tell[] us what you did learn form your survey with the voodoo sticks? I mean ground penetrating sonar?? The survey was furnished last week. If the equipment did work and you are happy with the survey, we the investors should hear about it.”

¶ 37. The preceding statement discloses Deep Blue proprietary information in violation of the Non-Disclosure Agreement.

¶ 38. On or about June 14, 2007, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “I did hear some good news about what Wilf is doing in Marathon. I’m sure that he will be releasing that info shortly. I’m glad that he doesn’t have the capt[ain] of the Deep Scan doing the work. His other divers don’t even know about this yet, so I hope he doesn’t blame them again for talking to me.”

¶ 40. On or about June 14, 2007, Defendant Krajewski published

the following statement on I-hub's Deep Blue Marine message board:

"No it won't be operational for a long time. The guy working on it, works slower than our State Road Department fixing opt holes. The again his nick name is 6K a month. I think he still thinks he works for the union."

¶ 42. On or about June 14, 2007, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

"I just hope he [Wilf Blum] keeps 6k capt joe away from the boat so it's ready this year."

¶ 44. Defendant Krajewski has made multiple additional derogatory posts, including divulging Deep Blue proprietary information, related to employees of Deep Blue, their compensation, where they are working, and what they are doing.

¶ 45. On or about June 14, 2007, Defendant Krajewski published the following on I-hub's Deep Blue Marine message board:

"I got to hand it over because they [the new divers] got a nice share of restricted stock and a good paying job."

¶ 47. On or about February 20, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

"I am not trying t[o] get him fired. I am showing how the shareholders money is being spent. I know that if less money is wasted, less stock has

to be sold by the company to support its operation in the DR. Let's face it. \$72,000 in salary over [t]he course of a year equals a lot of stock when it is sold below a penny."

¶ 49. On or about February 22, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

"I think it does matter to Capt Mud, after all he got 55 million shares of stock that becomes unrestricted in Aug, for letting DPBM dive on the anchor that is in his permitted area at Woman Key."

¶ 51. On or about February 23, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

"I apologize for saying it was 55 million shares for getting to dive on an anchor. I stand corrected by the permit holder. It's 50 million shares. I also forgot to mention that the permit holder still thinks the Atocha was never found by Mel Fisher and that it is in his permit area."

¶ 53. On or about February 29, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

"I haven't forgotten about the EPA and Coast Guard handing out huge fines if there [h]as been any fuel spilled. I figured the company had

enough problems and didn't need me to bring that one up too. Now that the company won't be going to the DR [Dominican Republic] in the very near future, I hope that they [are] going to be diving in KW trying to find something before the merger takes place. I think it is reprehensible for the company to give the boat Capt of the Deep Scan 2 weeks off after he just got 6 weeks paid vacation in November, another 2 week off for Christmas and is almost a year late in getting the Deep Scan fixed. The investors shouldn't have to pay for the other divers to sit around for several more weeks while the Tracey is being fixed too...."

¶ 55. On or about February 29, 2008, Defendant Krajewski published the following statement of I-hub's Deep Blue Marine message board:

"Innocent Investors?" Yes you are right, I am trying to protect the innocent investors. If anyone cares to check the PR's from day one, you will see that most of them are either false or misleading. I have friends that have lost over \$100K in DPBM. I don't want any more old ladies losing their retirement money without knowing ALL about the company. (Good or Bad) As Wilf says[,] "Don't invest any money that you can't afford to lose." Now, I think that kind of says it all."

¶ 57. On or about March 1, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

“I do know where the segment of the groove in the reef was filmed for the Good Morning America segment and it WASN’T in the DPBM permit area. You can dive there recreationally and not break any laws, but when you do it with an underwater metal detector it is called breaking the law and that is a FACT, not an opinion.”

¶ 59. On or about March 1, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“Let’s set the record straight right now....While DPBM may have dove at that site he mentioned, that is not where the BBQ grill was filmed. If anyone wants proof, contact the Good Morning America producer and ask him. If he tells you that was about 50 to 100 yards off of an Island called Ballast Key, it is right where I said it was filmed and that IS NOT in the permitted area. Secondly[,] I think the poster of #15714 doesn’t want to get in trouble with Marine Sanctuary if it was filmed where I said it was. He is responsible for the sub-contractors under his permit. Thirdly, I know I must have upset the CEO with my posts, because he called and left me a voice mail. I doubt that I was the only one he called. Just my opinion, but I think he probably called several people to try and refute what I posted.”

¶ 61. On or about March 1, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“He [Wilf Blum] can get away with it as long as the investors allow him to[] and don’t take any action [to] stop it.”

¶ 63. On or about March 1, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“Jeeper, on the contrary. These are facts. Just as the false and misleading PR’s are facts. I didn’t write the PR’s the Company did. I didn’t take [] the Good Morning America Producer to dive on a site that is outside DPBM’s permit area, the CEO did....You ask if I am making a suggestion that the CEO was trying to mislead the producers and view[er]s?? I don’t think it takes a Rocket Scientist to figure that one out. Yes, the segment did mislead the viewers and producers, just like the false and misleading PR’s mislead the investors.”

¶ 65. On or about March 1, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“Just for your information. The CEO also manipulated the Producer of Good Morning America. If you watch the segment again where they found the rusted BBQ grill and the CEO talks about the groove in the coral where a ship ran aground. That groove in the reef in very shallow water[] is right in front of the Ballast Key and it is NOT in DPBM’s permitted area. The CEO and everyone that was on the boat for that segment, except for the Good Morning America crew, knew that was not DPBM’s

permitted area. I know because I dove on that site with at least one other person that was in that segment....”

¶ 67. On or about March 2, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “Don’t try and manipulate this board by saying things that aren’t true. Go back and find the post where I stated that the company spilled oil into the water. You won’t find it, because I never said it. I said “if” it happened they should go after the marine surveyor that checked the boat out before they bought the boat. My guess at this point is that a Marine Survey was never done. Another Rookie mistake. Pump the stock all you want. I think the investors have a good idea who is telling the truth and who isn’t. I think they are tired of the 2 year family vacation.”

¶ 69. On or about March 3, 2008, Defendant Krajewski published the following statement on I-hub’s Copper King Mining Corporation message board: “you might want to check out the 504d stock that he gave out for CPRK. I understand that someone did an illegal distribution.”

¶ 71. On or about March 18, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “And as far as not wanting anything or a percentage for giving Wilf a wreck. Wilf lied to you again. I ask for one of the new metal detectors

that Wilf was a supplier of and one of the old ones that DPBM had laying around for my son, Wilf gave up the old one and never was good at his word. When I kept calling him about the new Aqua Pulse, it was always 2 more weeks. (I think I've heard that a lot from DPBM). I never did get it."

¶ 73. On or about March 7, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board: "I have to totally agree with you. The contract in the DR [Dominican Republic] is a great thing for Tracey Bowden. After all he made over \$350,000 of DPBM investor['s] money. In the CEO's own Words in an interview: 'The Scipion is an Historical Shipwreck and IF there is any money on it, it will be a plus.' Great deal for Tracey, doesn't seem like it's going to make any money for investors."

¶ 75. On or about March 18, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board: "My problem from the beginning is that DPBM doesn't tell the truth in its PR's. People invested their money based on those false or misleading claims DPBM; PR's. That is where I have a problem. Tell the truth from the beginning and then if you don't succeed, a[t] least you can say that you tried and failed. Don't base the companies future on things that aren't true. At least that way if the company fails, you weren't taking investors

money on false pretenses. Just my opinion.”

¶ 77. On or about April 7, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “Credibility does mean everything. Especially when you are the one that takes investors money and runs a company. As you will see in the below post. The SEC does go after people that put out false PR’s and do illegal distribution of 504D shares of stock. Guess what. DPBM did both of these things and is under investigation by the SEC. So you are right, Credibility does mean something to the SEC too.”

¶ 79. On or about April 8, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “I know I witnessed it for a year in Key West. The family flying back and forth from Salt Lake City to Key [W]est every 2 weeks. All expenses paid in Key West by shareholders.”

¶ 81. On or about April 15, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “Yes, I worked for him in 2006. No, I didn’t have to supply any information to the SEC. The SEC visited an office in Utah at least 3 times in the last 2 months. The last time the SEC attorney’s brought a Court Reporter with them. The office they visited wasn’t Wilf’s. It was an office that has been in several PR’s concerning Copper King and NO this

office did nothing wrong. The subject of the SEC's investigation was YOUR friend Wilf. Sorry everyone when I posted this, I responded to a message on my message board. I thought this was the Copper King board at the time. However, I don't believe this is off topic here, because it involves the CEO or DPBE and it could involve your stock prices here to."

¶ 83. On or about April 15, 2008, Defendant Krajewski published the following statement on I-hub's Copper King Mining Corporation message board:

"I know that Wilf is under investigation by the SEC and it probably will impact CPRK. Since that is what the investigation is centered on."

¶ 85. On or about April 15, 2008, Defendant Krajewski published the following statement on I-hub's Copper King Mining Corporation message board:

"Their investigation centers on FALSE PR's that Wilf put out and illegal distribution of 504D shares of stock. And no, I had no part in reporting this to the SEC."

¶ 87. On or about April 19, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

"I think you are going to have a long wait until you get a straight answer from DPBE on any of the real questions that concern investors. The CEO and his family appear to be doing the same thing that they did in Key

West. Taking all expense paid family diving vacations with investors[‘]s money. Apparently the CEO doesn’t care to keep investors informed.”

¶ 89. On or about April 20, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“Wow, talk about a story from Wilf and a family diving vacation. 8 relatives total in the DR. 5 paid their own way EXCEPT for meals. (The shares holders paid for those) I guess the investors also paid the all expense paid trip for his wife and 2 daughters. Talk about abuse of investor[‘]s money.”

¶ 91. On or about April 20, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“CPRK is not doing well and either is Wilf who is involved in both companies. DPKE and CPRK are both under investigation because of WHAT Wilf did. Not anything I said, but his actions.”

¶ 93. On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“I guess the saying goes. ‘He’s laughing all the way to the bank.’ He certainly has more then one Golden Goose, but I hear that he may be paying the piper pretty soon.”

¶ 95. On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“My statements are not misleading. If Wilf is talking to investors by phone and is giving them inside information. That is illegal. He has to release information publicly. He is not doing that. He has promised from the beginning to keep investors informed. He isn’t doing that either. This is a public company, as jrf30 so well pointed out. The CEO has committed multiple SEC violations. (Just like he did when he called a few select investors in Key West, before the stock went up, because of events he told them about, before it was released to the public).”

¶ 97. On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“I think the investors should be more concerned about the SEC investigation of DPBE’s [Deep Blue Marine] CEO. Now from what I just told, It’s a lot worse then just the SEC. The Board of Directors might have to look for someone else to run the Company, if there is going to be a Company.”

¶ 99. On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“The SEC Attorney’s went to that particular office 2 times taking statements. On the third visit, they brought the Court Reporter. In my opinion that is a Red Flag. On another note. Since the Staff of DPBE is monitoring this board. I’d like to know why they aren’t responding to the

numerous questions that other posters have asked them on this board?????”

¶ 101. On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “We now know from you[r] DD that there is a file on DBPE, I suggest that you also ask your friend about a specific file on the CEO about another company and ask him what happens when the SEC Attorney’s take a court reporter with them. If you would have read into my post, I said that there was an on going investigation by Federal Authorities that wasn’t part of an SEC investigation.”

¶ 103. On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “I hear you my friend. I just have a hard time trying to see where the CEO put \$800K into this Company. If the CEO spent 2.4 million of investors money. I think that is too much for what was produced, but to say he put in another \$800K in unbelievable. No I take it back. He paid Capt Joe and Himself \$800K.”

¶ 105. On or about April 25, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board: “Maybe it would be better to pay a security guard a few bucks to watch Deep Scan, then to pay Capt. Joe \$72,000 a year to sit on his butt in Key

West.”

¶ 107. On or about April 29, 2008, Defendant Krajewski published the following statement on I-hub’s Copper King Mining Corporation message board:

“I’ll tell you very concisely how WB can dilute publicly traded mining stock. When he gives himself and his friends 10’s of millions of shares for putting the deal together and promoting the stock and then sells them.”

¶ 109. On or about April 30, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“I would like to know 2 things concerning the \$800K that Wilf said[] that he put into the company. If he is allowed to raise 1 million dollars a year thru DPBM stock sales, and he raised that money. #1. where did the 2 million go that the investors put into the company? (Besides all expenses paid family vacations.) #2. Where did the \$800K[] come from that he loaned DPBM? (He filed for bankruptcy a few years ago. I guess he made it somehow. I’m wondering if it came from the stock that he gave Alexander Lindale and his other companies for promoting DPBM and then sold when the stock hit \$1.01 a share). Well I guess running a pink sheet company is pretty good, if you don’t have to file financial reports.”

¶ 111. On or about May 3, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“Jeeper, I don’t think there is a reasonable explanation of why the CEO made the decision that he did in picking the 3 wrecks that he picked in the DR. A CEO with any experience in this business would not have picked wrecks without treasure on them. Every knowledgeable person in the Treasure Salvage business knows that you have to do a survey based on research to locate a treasure wreck. Apparently Tracey Bowden did the research, but the CEO of this company didn’t want to conduct the survey to find the Treasure Wreck. I call that incompetent, and the ones paying for the incompetence are the stock holders.”

¶ 113. ON or about May 4, 2008, Defendant Krajewski published the following statement on I-hub’s Deep Blue Marine message board:

“Once again, I am not the one that has taken investors money. So it doesn’t matter if I’m diving in the DR or not. You should worry about who is using the money that was invested and how it is used. Yes Tracey B. made out like a bandit. He sold Wilf the Scipion 20 years after he found it. He sold him the rights to 2 Spanish Ships that are in an Underwater Nature Preserve, which probably means that those wrecks can never be salvaged. Now if those wrecks can’t be salvaged and someone took money for them. I would call that at the very least bad business practices for Tracey B. as well as the person that runs the Company and never looked into the fact that he could never salvage 2 wrecks, that he

paid several hundred thousand dollars for. I might even call that criminal. The only one that is sure to make money on this deal is Tracey Bowden. \$300K for the salvage rights to 3 wrecks. 2 of which probably can't even be salvaged. \$3K a day for the lease of Tracy's boat. Yes, Tracy made out very well."

¶ 115. On or about May 5, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board: "If your dividends are coming from a Mr. Shupe [President of Oceanic Research and Recovery] as Wilf stated on another board, I hope the company he was getting to take over the Key West operation wasn't Oceanic Research and Recover. (ORRV) You might want to check this stock on Pink Sheets.Com yourself. It looks like trading has been suspended and there is an investigation because of the insiders associated with this company."

¶ 116. The preceding statement is false.

¶ 117. On or about May 5, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board: "The Company (ORRV) is shut down from trading. What else do you need to know? I guess that just tells you a lot about the Company and President that are taking over the Key West Operation."

¶ 118. The preceding statement is false.

¶ 119. On or about May 5, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board: "I'm not the one drinking the Kool Aid. ORRV is shut down from trading. If that makes you happy, so be it. It means your dividend shares are worthless."

¶ 120. The preceding statement is false.

¶ 161. As operations manager for Deep Blue Marine, Krajewski had access to proprietary information and trade secrets of Deep Blue.

¶ 162. Krajewski signed an Employee/Contractor Non-Disclosure and Drug Free Agreement ("Agreement") on October 10, 2006, to prohibit his unauthorized disclosure of proprietary information and trade secrets of Deep Blue.

¶ 163. Pursuant to the Non-Disclosure Agreement, Krajewski agreed that during the course of his employment, and after the termination of employment, he would not disclose trade secrets as defined in the Agreement.

¶ 169. All contracts entered into, associated with, or alleged herein are subject to the covenant of good faith and fair dealing.

¶ 180. Given the nature of this matter, Plaintiffs submit that a bond is not required to enjoin Defendant from disclosing Deep Blue's proprietary information and trade secrets in violation of the Non-

Disclosure Agreement and from publishing false and defamatory statements against Plaintiffs.

Pl's Compl.; Def's Asw.

21. As a direct result of comments left by Krajewski on various internet investment message boards, Plaintiff Alexander Lindale has lost a public relations contract with one of its clients, a company called Copper King, after receiving numerous calls from Copper King expressing concern over the flood of postings by Krajewski. The loss of this contract involves the loss of thirty million shares of restricted stock in Copper King. Blum Aff. ¶¶ 13-15, 67.

22. Plaintiff Wilf Blum has make numerous trips to visit individuals, entities and governments to address concerns created by the messages Krajewski has posted to internet message boards. *Id.*

23. As a result of the posts by Krajewski, Deep Blue has had to spend numerous hours, for many weeks, dealing with concerns from investors, vendors, partners, permit authorities and others, costing Deep Blue large amounts of time, energy, and expense. Blum Aff. ¶ 75.

24. As a result of messages Krajewski has posted to internet message boards, Deep Blue has received over 50 telephone calls from investors and others concerned about the allegations made by Krajewski. Blum Aff. ¶ 70.

25. Deep Blue has agreements with Tracey Bowden ("Bowden") for salvage operations in the Dominican Republic. Blum Aff. ¶ 33.

26. As a result of Krajewski's posting of Deep Blue proprietary information, the agreement between Deep Blue and Bowden has come under scrutiny by the government of the Dominican Republic which is threatening Deep Blue's permission and investment in time and resources in the Dominican Republic salvage site. Blum Aff. ¶ 73.

27. Since Krajewski's latest round of postings on internet message boards, Bowden has been summoned by the Dominican Republic authorities expressing an intent, for the first time in over thirty years, to charge a boat tax to Bowden and to Deep Blue, increasing the cost and stability of Deep Blue's operations in the Dominican Republic. Blum Aff. ¶ 74.

28. Deep Blue is currently under contract with the Dominican Republic to work three wrecks, some of which have already produced significant treasure. Blum Aff. ¶ 76

29. Deep Blue has proprietary plans for other activity in the region of the Dominican Republic which could be jeopardized by ongoing publication of allegations of illegalities.

SUMMARY JUDGMENT STANDARD

A party is entitled to summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. Rule 56(c). An interlocutory summary judgment may be rendered on liability

alone, even if there is a genuine issue on the amount of damages.” Fed. R. Civ. P. Rule 56(d)(2).

ARGUMENT

I. Under Fed. R. Civ. P. Rule 8, Krajewski’s answers to allegations in the complaint that they are “Neither Affirmed or Denied” amount to admissions.

In responding to a pleading, a party must admit or deny the allegations asserted against it by an opposing party. Fed. R. Civ. P. 8(b). An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. *Id.* See *Burlington Northern R. Co. v. Huddleston*, 94 F.3d 1413 (10th Cir. 1996)(“By failing to submit an answer or other pleading denying the factual allegations of Plaintiff’s complaint, Defendant admitted those allegations, thus placing no further burden upon Plaintiff to prove its case factually.”); *Shakman v. Democratic Org. of Cook County*, 533 F.2d 344, 352 (7th Cir. 1976)(Respondents’ failure to deny in their answer allegation of actual notice of judgment deemed an admission under Fed.R.Civ.P. 8(d)); *Citizens Concerned for Separation of Church and State v. City and County of Denver*, 628 F.2d 1289, 1298, (10th Cir. 1980)(Explaining that purpose of rule served is that allegations in the complaint not denied will stand admitted and will not be at issue at trial.” (Allegation was not deemed admitted since a responsive pleading was not required under the circumstances)). A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must say so, and the statement

has the effect of a denial. Fed. R. Civ. P. 8(b)(5).

Addressing an assertion in a defendant's answer that the defendant "neither admits nor denies the truths of the allegations" that the defendant was a landlord of the premises in question, the First Circuit Court of Appeals deemed the failure to admit or deny to be an admission. *Mahanor v. United States*, 192 F.2d 873, 876 (1st Cir. 1951). The court noted that the rule provides that a defendant without knowledge or information sufficient to form a belief as to the truth of an allegation must say so, and this has the effect of a denial. *Id.* Further noting that the defendant did not couch the answer in the required form even though the defendant obviously must have known whether the allegation was true or not, the court ruled that the defendant must be taken to have admitted the allegation, "for Rule 8(d) provides that averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading." *Id.* (String cite omitted).

In the present case, Krajewski responded to sixty-nine out of one hundred and eighty allegations in the complaint that they were "Neither Affirmed Nor Denied." Nearly all of the allegations to which Krajewski responded, "Neither Affirmed Nor Denied," involve either acts alleged to have been personally performed by Krajewski or facts within his personal knowledge and information. For instance, allegations "Neither Affirmed Nor Denied" by Krajewski include among others:

- Defendant...repeatedly alleges that Deep Blue and Blum are under SEC and federal "investigation." *Id.* at ¶ 33.

- On or about April 7, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

“Credibility does mean everything. Especially when you are the one that takes investors money and runs a company. As you will see in the below post. The SEC does go after people that put out false PR's and do illegal distribution of 504D shares of stock. Guess what. DPBM did both of these things and is under investigation by the SEC. So you are right, Credibility does mean something to the SEC too.” *Id.* at ¶ 77.

- On or about April 23, 2008, Defendant Krajewski published the following statement on I-hub's Deep Blue Marine message board:

“I think the investors should be more concerned about the SEC investigation of DPBE's [Deep Blue Marine] CEO. Now from what I just told, It's a lot worse then just the SEC. The Board of Directors might have to look for someone else to run the Company, if there is going to be a Company.”

Krajewski obviously knows whether he published the comments alleged in the complaint. He cannot claim to have insufficient knowledge or information to form a belief as to whether or not he published them. Indeed, those sixty-nine allegations “Neither Affirmed Nor Denied” by Krajewski are not only, each and every one, within his personal knowledge, they are the allegations of his acts giving rise to the complaint. It appears that Krajewski declined to admit or deny certain allegations (he responded to

ninety-nine allegations of the complaint that they were “Denied” or “Strongly Denied”) not because he lacked personal knowledge or information, but rather to be coy and evasive about those allegations that he perceived as harmful to his case.

Because Krajewski obviously has personal knowledge of the allegations and his evasive answers therefore cannot comport with the form required under Rule 8(b)(5) for answers that have the effect of a denial, under the rule, Krajewski’s evasive answers must be taken as admissions.

II. Krajewski’s published statements charging Plaintiffs with criminal conduct and conduct that is incompatible with the exercise of a lawful business are Defamation Per Se.

A claim for defamation requires a showing that the defendant published statements concerning the plaintiff that were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault and that their publication resulted in damage. *West v. Thomson Newspapers*, 872 P.2d 999, 1007-08 (Utah 1994). A statement charging another with criminal conduct is slanderous or libelous per se. *Auto West, Inc. v. Baggs*, 678 P.2d 286, 290 (Utah 1984)(Citations omitted). Likewise, a statement charging conduct that is incompatible with the exercise of a lawful business, trade, profession, or office is defamation per se. *Baum v. Gillman*, 667 P.2d 41, 43 (Utah 1983). When words are defamatory per se, no showing of special damages is required because damages are implied. *Baggs*, 678 P.2d at 290.

In this case Krajewski has repeatedly published false statements on various

internet message boards accusing Plaintiffs of violations of SEC regulations and law, violations of other federal laws including securities laws, of being under investigation by the SEC and federal authorities, and of having operated unlawfully by diving in an area without a permit. For instance, Krajewski has published the following:

- Credibility does mean everything. Especially when you are the one that takes investors money and runs a company. As you will see in the below post. The SEC does go after people that put out false PR's and do illegal distribution of 504D shares of stock. Guess what. DPBM did both of these things and is under investigation by the SEC.

Plaintiffs' Complaint ¶ 77 ("Neither Affirmed Nor Denied" in Defendant's Answer).

- The SEC visited an office in Utah at least 3 times in the last 2 months. The last time the SEC attorney's brought a Court Reporter with them. The office they visited wasn't Wilf's. It was an office that has been in several PR's concerning Copper King and NO this office did nothing wrong. The subject of the SEC's investigation was YOUR friend Wilf.

Id. at ¶ 81 ("Neither Affirmed Nor Denied" in Defendant's Answer).

- I know that Wilf is under investigation by the SEC and it probably will impact CPRK. Since that is what the investigation is centered on.

Id. at ¶ 83 ("Neither Affirmed Nor Denied" in Defendant's Answer).

- Their investigation centers on FALSE PR's that Wilf put out and illegal distribution of 504D shares of stock. And no, I had no part in reporting this to the

SEC.

Id. at ¶ 85 (“Neither Affirmed Nor Denied” in Defendant’s Answer). :

- CPRK is not doing well and either is Wilf who is involved in both companies. DPKE and CPRK are both under investigation because of WHAT Wilf did. Not anything I said, but his actions.

Id. at ¶ 91 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- My statements are not misleading. If Wilf is talking to investors by phone and is giving them inside information. That is illegal. He has to release information publicly. He is not doing that. He has promised from the beginning to keep investors informed. He isn’t doing that either. This is a public company, as jrf30 so well pointed out. The CEO has committed multiple SEC violations. (Just like he did when he called a few select investors in Key West, before the stock went up, because of events he told them about, before it was released to the public).

Id. at ¶ 95 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

While this is not an exhaustive recounting of Krajewski’s published comments accusing Plaintiff’s of violating various federal laws and of being under investigation by the SEC, it suffices to establish the character of his published comments along this subject matter and their repeated and ongoing nature. Krajewski has also published comments accusing Plaintiffs of misappropriating and misusing company funds.

- I know I witnessed it for a year in Key West. The family flying back and forth

from Salt Lake City to Key [W]est every 2 weeks. All expenses paid in Key West by shareholders.

Id. at ¶ 79 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- Wow, talk about a story from Wilf and a family diving vacation. 8 relatives total in the DR. 5 paid their own way EXCEPT for meals. (The shares holders paid for those) I guess the investors also paid the all expense paid trip for his wife and 2 daughters. Talk about abuse of investor[‘]s money.

Id. at ¶ 89 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- I’ll tell you very concisely how WB can dilute publicly traded mining stock. When he gives himself and his friends 10’s of millions of shares for putting the deal together and promoting the stock and then sells them.

Id. at ¶ 107 (“Neither Affirmed Nor Denied” in Defendant’s Answer). Krajewski has also accused Plaintiffs of unlawfully diving in areas without a permit.

- I do know where the segment of the groove in the reef was filmed for the Good Morning America segment and it WASN’T in the DPBM permit area. You can dive there recreationally and not break any laws, but when you do it with an underwater metal detector it is called breaking the law and that is a FACT, not an opinion.

Id. at ¶ 57 (“Neither Affirmed Nor Denied” in Defendant’s Answer). *See also, id.* at ¶¶ 59, 63, 65.

Krajewski’s published statements charging Plaintiffs with criminal conduct and

conduct that is incompatible with the exercise of a lawful business are false. Neither Deep Blue nor Wilf Blum have had any notice of an SEC investigation conducted for any reason. Wilf Blum Affidavit, ¶¶ 63, 64. No SEC attorney, investigator, or reporter has ever made contact with Deep Blue or appeared at the office of Deep Blue. *Id.*, ¶ 65. No SEC attorney, investigator, or reporter has made contact with or appeared at any office of Plaintiff Wilf Blum. *Id.*, ¶ 66. Plaintiff Wilf Blum's family has never taken a vacation at the expense of Deep Blue or its investors. *Id.*, ¶ 49. Krajewski's accusation that Deep Blue has engaged in salvage activity outside of its permit areas is also false. *Id.*, ¶ 27.

Krajewski's published statements charging Plaintiffs with criminal conduct and conduct that is incompatible with the exercise of a lawful business were made with knowledge that they were false or, at the least, with reckless disregard of whether they were false or not. Further, his conduct in publishing these statements was willful and malicious. Plaintiffs are entitled to summary judgment and to general and special damages to be proved including, without limitation, the loss of a public relations contract and several million shares of restricted stock, injured and tarnished reputation, impairment of standing in the community, mental anguish and suffering, damages in the amount of time and money invested into the company Deep Blue and other companies, in the increased costs and expenses to manage the company, the time and expense to meet with investors and answer questions regarding the Krajewski's published statements, unknown loss of investors and income as a result of the published statements, the risk of loss of Deep Blue due to the loss of investor confidence and trust resulting from

Krajewski's published statements, and the fees and costs of this action. Plaintiffs are also entitled to punitive damages in an amount not less than \$500,000.000 to be assessed against Krajewski to punish him for such wrongs and to serve as a deterrent to others not to offend in like manner.

III. Krajewski's published statements constitute Defamation Per Quod.

A claim for defamation requires a showing that the defendant published statements concerning the plaintiff that were false, defamatory, and not subject to any privilege, that the statements were published with the requisite degree of fault and that their publication resulted in damage. *Thomson Newspapers*, 872 P.2d at 1007-08.

As discussed above, Krajewski has published false statements accusing Plaintiffs of various criminal acts, including insider trading, SEC violations, violations of federal law, diving outside of Deep Blue's permit area, and misappropriation of company funds. Krajewski published the false statements with the knowledge that they were false or, at the least, with reckless disregard to the truth or falsity of the statements. Obviously Krajewski published the false statements with the intent that they would be believed by reasonable investors, or that the false statements would cause in the minds of reasonable investors concern that Wilf Blum, Deep Blue, and Alexander Lindale had committed or are committing serious crimes, including SEC violations.

Krajewski's publications have damaged Plaintiffs. As a direct result of comments left by Krajewski on various internet message boards, Plaintiff Alexander Lindale has lost a public relations contract with a company involving several million shares of

restricted stock. Blum Aff. ¶¶ 13-15, 67. Plaintiff Wilf Blum has had to make numerous trips to visit individuals, entities and governments to address concerns created by the messages Krajewski has posted to internet message boards. *Id.* As a result of the posts by Krajewski, Deep Blue has had to spend numerous hours, for many weeks, dealing with concerns from investors, vendors, partners, permit authorities and others, costing Deep Blue large amounts of time, energy, and expense. Blum Aff. ¶ 75. As a result of messages Krajewski has posted to internet message boards, Deep Blue has received over 50 telephone calls from investors and others concerned about the allegations made by Krajewski. Blum Aff. ¶ 70.

Plaintiffs have been further damaged by Krajewski's publications. Deep Blue has agreements with Tracey Bowden ("Bowden") for salvage operations in the Dominican Republic. Blum Aff. ¶ 33. As a result of Krajewski's posting of Deep Blue proprietary information, the agreement between Deep Blue and Bowden has come under scrutiny by the government of the Dominican Republic which is threatening Deep Blue's permission and investment in time and resources in the Dominican Republic salvage site. Blum Aff. ¶ 73. Since Krajewski's latest round of postings on internet message boards, Bowden has been summoned by the Dominican Republic authorities expressing an intent, for the first time in over thirty years, to charge a boat tax to Bowden and to Deep Blue, increasing the cost and stability of Deep Blue's operations in the Dominican Republic. Blum Aff. ¶ 74.

Krajewski published statements concerning Plaintiffs that were false, defamatory, and not subject to any privilege. The statements were published with the requisite degree

of fault and that their publication resulted in damage. Krajewski's published statements were made with knowledge that they were false or, at the least, with reckless disregard of whether they were false or not. Further, his conduct in publishing these statements was willful and malicious.

Plaintiffs are entitled to summary judgment and to general and special damages to be proved including, without limitation, the loss of a public relations contract and several million shares of restricted stock, injured and tarnished reputation, impairment of standing in the community, mental anguish and suffering, damages in the amount of time and money invested into the company Deep Blue and other companies, in the increased costs and expenses to manage the company, the time and expense to meet with investors and answer questions regarding the Krajewski's published statements, unknown loss of investors and income as a result of the published statements, the risk of loss of Deep Blue due to the loss of investor confidence and trust resulting from Krajewski's published statements, and the fees and costs of this action. Plaintiffs are also entitled to punitive damages in an amount not less than \$500,000.000 to be assessed against Krajewski to punish him for such wrongs and to serve as a deterrent to others not to offend in like manner.

IV. Krajewski's published statements constitute the privacy tort of false light.

The "false light" privacy tort provides that one is subject to liability to another for invasion of privacy if (1) he or she gives publicity to a matter concerning another that places the other before the public in a false light; (2) the false light in which the other was

placed would be highly offensive to a reasonable person; and (3) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Stein v. Marriott Ownership Resorts, Inc.*, 944 P.2d 374, 380 (Utah Ct.App. 1997)(Citations omitted). A false light claim is "closely allied" with an action for defamation, and "the same considerations apply to each." *Id.*

As discussed above, Krajewski published on various internet message boards false statements accusing Plaintiffs of various criminal acts, including but not limited to insider trading, SEC violations, violations of federal law, diving outside of Deep Blue's permit area, and misappropriation of company funds for personal and family use. Krajewski's published comments place Plaintiffs in a false light. The false light in which Plaintiffs were placed would be highly offensive to a reasonable person. Krajewski had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Plaintiffs would be placed.

Plaintiffs are entitled to summary judgment and to general and special damages to be proved including, without limitation, the loss of a public relations contract and several million shares of restricted stock, injured and tarnished reputation, impairment of standing in the community, mental anguish and suffering, damages in the amount of time and money invested into the company Deep Blue and other companies, in the increased costs and expenses to manage the company, the time and expense to meet with investors and answer questions regarding the Krajewski's published statements, unknown loss of investors and income as a result of the published statements, the risk of loss of Deep Blue

due to the loss of investor confidence and trust resulting from Krajewski's published statements, and the fees and costs of this action. Plaintiffs are also entitled to punitive damages in an amount not less than \$500,000.000 to be assessed against Krajewski to punish him for such wrongs and to serve as a deterrent to others not to offend in like manner.

V. Krajewski's published comments constitute intentional interference with economic relations.

A claim for intentional interference with economic relations "protects both existing contractual relationships and prospective relationships of economic advantage not yet reduced to a formal contract." *Anderson Development Co. v. Tobias*, 2005 UT 36, ¶ 20, 116 P.3d 323 (Utah 2005)(Citation omitted). Such a claim requires a showing that (1) the defendant intentionally interfered with the plaintiff's existing or potential economic relations, (2) for an improper purpose or by improper means, (3) causing injury to the plaintiff. *Id.* With respect to the second element, only one alternative, either improper purpose or improper means, need be established; a plaintiff need not prove both. *Id.* "Improper means include...defamation, or disparaging falsehood." *Overstock.Com, Inc. v. Smartbargains, Inc.*, 2008 UT 55, ¶18, slip op. at 10 (Utah 2008)(Citation omitted).

As discussed above, Krajewski published on various internet investor message boards false statements accusing Plaintiffs of various criminal acts, including but not limited to insider trading, SEC violations, violations of federal law, diving outside of

Deep Blue's permit area, and misappropriation of company funds for personal and family use.

As a direct result of comments left by Krajewski on various internet investment message boards, Plaintiff Alexander Lindale has lost a public relations contract with one of its clients, a company called Copper King, after receiving numerous calls from Copper King expressing concern over the flood of postings by Krajewski. Blum Aff. ¶¶ 13-15, 67. The loss of this contract involves the loss of thirty million shares of restricted stock in Copper King. *Id.* Krajewski left the following comments on I-hub's Copper King Mining Corporation message board:

- “you might want to check out the 504d stock that he gave out for CPRK. I understand that someone did an illegal distribution.”

Pl's Compl. ¶ 69 (Answered “Neither Affirmed Nor Denied” in Def's Answ).

- “I know that Wilf is under investigation by the SEC and it probably will impact CPRK. Since that is what the investigation is centered on.”

Pl's Compl. ¶ 83 (Answered “Neither Affirmed Nor Denied” in Def's Answ).

- “Their investigation centers on FALSE PR's that Wilf put out and illegal distribution of 504D shares of stock. And no, I had no part in reporting this to the SEC.”

Pl's Compl. ¶ 85 (Answered “Neither Affirmed Nor Denied” in Def's Answ).

- “I'll tell you very concisely how WB can dilute publicly traded mining stock. When he gives himself and his friends 10's of millions of shares for putting the

deal together and promoting the stock and then sells them.”

Pl’s Compl. ¶ 85 (Answered “Neither Affirmed Nor Denied” in Def’s Answ). In addition, Krajewski posted the following comment on I-hub’s Deep Blue message board:

- “Yes, I worked for him in 2006. No, I didn’t have to supply any information to the SEC. The SEC visited an office in Utah at least 3 times in the last 2 months. The last time the SEC attorney’s brought a Court Reporter with them. The office they visited wasn’t Wilf’s. It was an office that has been in several PR’s concerning Copper King and NO this office did nothing wrong. The subject of the SEC’s investigation was YOUR friend Wilf. Sorry everyone when I posted this, I responded to a message on my message board. I thought this was the Copper King board at the time. However, I don’t believe this is off topic here, because it involves the CEO or DPBE and it could involve your stock prices here to.”

Pl’s Compl. ¶ 81 (Answered “Neither Affirmed Nor Denied” in Def’s Answ).

By directing these comments directly to I-hub’s Copper King Mining Corporation message board, Krajewski intentionally interfered with the plaintiff’s existing and potential economic relations. Clearly his intent was to stir up trouble between the two companies which had between them an economic relationship. Krajewski accomplished his interference by defamation and disparaging falsehood. And the end result was the loss by Alexander Lindale of its client, Copper King Mining Co.

Furthermore, as discussed above, Krajewski published on I-hub’s Deep Blue

investor message board many false statements accusing Plaintiffs of various criminal acts, including but not limited to insider trading, SEC violations, violations of federal law, diving outside of Deep Blue's permit area, and misappropriation of company funds for personal and family use. These published comments were clearly intended to cause trouble for the company with its investors, potential investors, permit grantors and anyone else doing business or contemplating doing business with Deep Blue.

Plaintiffs are entitled to summary judgment and to general and special damages to be proved including, without limitation, the loss of a public relations contract and several million shares of restricted stock, injured and tarnished reputation, impairment of standing in the community, mental anguish and suffering, damages in the amount of time and money invested into the company Deep Blue and other companies, in the increased costs and expenses to manage the company, the time and expense to meet with investors and answer questions regarding the Krajewski's published statements, unknown loss of investors and income as a result of the published statements, the risk of loss of Deep Blue due to the loss of investor confidence and trust resulting from Krajewski's published statements, and the fees and costs of this action. Plaintiffs are also entitled to punitive damages in an amount not less than \$500,000.000 to be assessed against Krajewski to punish him for such wrongs and to serve as a deterrent to others not to offend in like manner.

VI. Krajewski's disclosure on various internet message boards of Deep Blue trade secrets constitutes breach of contract.

The elements of a prima facie case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages. *Bair v. Axiom Design, LLC*, 2001 UT 20, ¶ 14, 20 P.3d 388 (Utah 2001).

Krajewski signed an Employee/Contractor Non-Disclosure and Drug Free Agreement on October 10, 2006. Blum Aff. ¶ 30; Agreement, Exhibit A. Under the Agreement, Krajewski agreed that during the course of his employment and after termination of employment, he would not disclose trade secrets as defined in the Agreement. Agreement, Exhibit A. The Agreement explicitly included both technical and business information including methods, processes, discussions, plans, techniques, equipment, locations, discoveries, recovered materials, research projects, sources of supply, financial data and marketing, contract amounts and/or salaries, corporate income, disbursements, expenditures, and/or merchandising systems or plans.

Despite having signed the agreement, Krajewski published the following comments on internet message boards:

- “I did hear some good news about what Wilf is doing in Marathon. I’m sure that he will be releasing that info shortly. I’m glad that he doesn’t have the capt[ain] of the Deep Scan doing the work. His other divers don’t even know about this yet, so I hope he doesn’t blame them again for talking to me.”

Plaintiffs’ Complaint ¶ 38 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “No it won’t be operational for a long time. The guy working on it, works slower

than our State Road Department fixing opt holes. The again his nick name is 6K a month. I think he still thinks he works for the union.”

Plaintiffs’ Complaint ¶ 40 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “I just hope he [Wilf Blum] keeps 6k capt joe away from the boat so it’s ready this year.”

Plaintiffs’ Complaint ¶ 42 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “I got to hand it over because they [the new divers] got a nice share of restricted stock and a good paying job.”

Plaintiffs’ Complaint ¶ 45 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “I am not trying t[o] get him fired. I am showing how the shareholders money is being spent. I know that if less money is wasted, less stock has to be sold by the company to support its operation in the DR. Let’s face it. \$72,000 in salary over [t]he coarse of a year equals a lot of stock when it is sold below a penny.”

Plaintiffs’ Complaint ¶ 47 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “I think it does mater to Capt Mud, after all he got 55 million shares of stock that becomes unrestricted in Aug, for letting DPBM dive on the anchor that is in his permitted area at Woman Key.”

Plaintiffs’ Complaint ¶ 49 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “I apology[i]ze for saying it was 55 million shares for getting to dive on an anchor. I stand corrected by the permit holder. It’s 50 million shares. I also forgot to mention that the permit holder still thinks the Atocha was never found by Mel

Fisher and that it is in his permit area.”

Plaintiffs’ Complaint ¶ 51 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “Maybe it would be better to pay a security guard a few bucks to watch Deep Scan, then to pay Capt. Joe \$72,000 a year to sit on his butt in Key West.”

Plaintiffs’ Complaint ¶ 105 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

- “Jeeper, I don’t think there is a reasonable explanation of why the CEO made the decision that he did in picking the 3 wrecks that he picked in the DR. A CEO with any experience in this business would not have picked wrecks without treasure on them. Every knowledgeable person in the Treasure Salvage business knows that you have to do a survey based on research to locate a treasure wreck. Apparently Tracey Bowden did the research, but the CEO of this company didn’t want to conduct the survey to find the Treasure Wreck. I call that incompetent, and the ones paying for the incompetence are the stock holders.”

Plaintiffs’ Complaint ¶ 105 (“Neither Affirmed Nor Denied” in Defendant’s Answer).

These statements constitute disclosure of trade secrets as defined in the Agreement. Furthermore, Plaintiffs have been harmed in an amount to be proven. Plaintiffs are entitled to summary judgment on their breach of contract claim and to damages to be proved, plus legal fees and costs and pre- and post judgment interest thereon.

VII. Krajewski’s publication of trade secrets constitute breach of the covenant of good faith and fair dealing.

The implied covenant of good faith and fair dealing inheres in every contract. *See Eggett v. Wasatch Energy Corp.*, 2004 UT 28, ¶ 14, 94 P.3d 193. As distinguished from a contract's express terms, the covenant "is based on judicially recognized duties not found within the four corners of the contract." *Christiansen v. Farmers Ins. Exch.*, 2005 UT 21, ¶ 10, 116 P.3d 259. "Under [the covenant], both parties to a contract impliedly promise not to intentionally do anything to injure the other party's right to receive the benefits of the contract." *Eggett*, 2004 UT 28, ¶ 14. Generally, whether a party to a contract has acted reasonably "is an objective question to be determined without considering the [party's] subjective state of mind." *Billings v. Union Bankers Ins. Co.*, 918 P.2d 461, 465 n.2 (Utah 1996) (considering whether insurer acted in bad faith).

From the discussion above it is clear that Krajewski violated the terms of the Agreement by disclosing trade secrets, and that he did so in such a way as to, and with the intent of, harming Plaintiffs. As a consequence, Plaintiff Deep Blue has been damaged including general, special and consequential damages in an amount to be proved plus all legal fees and costs, and pre- and post judgment interest thereon.

VIII. Plaintiffs are entitled to Injunctive relief.

A court may grant a permanent injunction if it determines that (1) the petitioner establishes standing by demonstrating special damages, (2) the petitioner has a property right or protectable interest,^(fn4) (3) legal remedies are inadequate, (4) irreparable harm would result, (5) court enforcement is feasible, and (6) petitioner merits the injunction after balancing the equities. *Johnson v. Hermes Associates, Ltd.*, 2005 UT 82, ¶ 12, 128

P.3d 1151 (UT 2005).

As discussed above, Deep Blue has suffered special damages from Krajewski's publishing defamatory materials and trade secrets on internet investor message boards including, without limitation, the loss of a public relations contract and several million shares of restricted stock, damages in the amount of time and money invested into the company Deep Blue and other companies, increased costs and expenses, the time and expense to meet with investors and answer questions regarding the Krajewski's published statements, unknown loss of investors and income as a result of the published statements, the risk of loss of Deep Blue due to the loss of investor confidence and trust resulting from Krajewski's published statements, and the fees and costs of this action.

Plaintiffs have a protectable interest both in the enforcement of the contract that Krajewski has breached by publishing trade secrets and in protecting against the tort of defamation committed by Krajewski's publishing false and damaging materials about Plaintiffs. The harms to Plaintiffs from Krajewski's disclosures of proprietary information of Deep Blue, and his publishing false and defamatory statements alleging criminal conduct and federal investigations, among other false allegations, are permanent and, if not enjoined, can destroy Deep Blue. Money damages are inadequate when the potential damage in loss of business and dive permits could destroy the company. Court enforcement of an injunction is feasible. A balancing of the equities clearly shows that Plaintiffs merit an injunction since there is no harm to Krajewski save that he is prevented from passing along trade secrets and defamatory comments. Plaintiffs are

therefore entitled to injunctive relief.

CONCLUSION

A party is entitled to summary judgment “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. Rule 56(c). An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.” Fed. R. Civ. P. Rule 56(d)(2). Based on the foregoing arguments, Plaintiffs respectfully request that this Court grant summary judgment on the issue of liability on Plaintiffs’ claims that: (1) Krajewski’s published statements charging Plaintiffs with criminal conduct and conduct that is incompatible with the exercise of a lawful business are Defamation Per Se, (2) Krajewski’s published statements constitute Defamation Per Quod, (3) Krajewski’s published statements constitute the privacy tort of false light, (4) Krajewski’s published comments constitute intentional interference with economic relations, (5) Krajewski’s disclosure on various internet message boards of Deep Blue trade secrets constitutes breach of contract, (6) Krajewski’s publication of trade secrets constitute breach of the covenant of good faith and fair dealing. Plaintiffs also ask this court to grant injunctive relief.

DATED this 9th day of October, 2008.

_____/S/
Kenneth R. Ivory
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 9, 2008, I caused the **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be sent by US Mail and email to the following:

Email: happydiver12@yahoo.com
E_krajewski@comcast.net

and

Edward Krajewski
2140 Colony Rd.
Jamison, PA 18929

_____/S/
Kenneth R. Ivory, Esq.