

**Law Office of Christopher B. Vreeland**

119 North Grand Street  
Marshall, Michigan 49068  
(269) 789-0787  
FAX (269) 789-0815  
www.VreelandLaw.com

April 30, 2010

**Kalamazoo County Circuit Court**  
227 West Michigan Avenue  
Kalamazoo, MI 49007

**Re.: Bird & T & J Towing v. Kurtz**  
**File #: 2010 – 0206 – NZ**  
**Kalamazoo County Circuit Court**

Dear Sir or Madam:

Please find enclosed for filing in the above matter the following documents:

1. *Defendant/Counterplaintiff's Answer to Complaint, Affirmative Defenses, Counterclaims, & Jury Demand*; and
2. *Proof of Service*

Please do not hesitate to contact the undersigned if further information is required to process this request.

Thank you for your attention to this matter.

Very truly yours,

LAW OFFICE OF CHRISTOPHER B. VREELAND



Christopher B. Vreeland

CC: Client  
Dani K. Liblang  
Richard K. Burnham

STATE OF MICHIGAN

IN THE 9<sup>th</sup> JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JOSEPH BIRD, individually, and  
T & J TOWING,

Plaintiffs

v

JUSTIN KURTZ, individually,

Defendant/Counterplaintiff.

HON. GARY C. GIGUERE, JR.

Case no. 2010 – 0206 – NZ

**ANSWER TO COMPLAINT,  
AFFIRMATIVE DEFENSES,  
COUNTERCLAIMS, & JURY  
DEMAND**

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Richard K. Burnham (P11427)  
Attorney for Plaintiffs  
303 Paw Paw St.  
Center Building, Ste. #1  
Paw Paw, MI 49079  
(269) 657-5566

LAW OFFICE OF CHRISTOPHER B.  
VREELAND  
By: Christopher B. Vreeland (P60003)  
Attorneys & Co-counsel for Defendant  
119 North Grand Street  
Marshall, MI, MI 49068  
(269) 789-0787

LIBLANG & ASSOCIATES, P.C.  
By: Dani K. Liblang (P33713)  
Attorneys & Co-counsel for Defendant  
346 Park Street, Suite 200  
Birmingham, MI 48009  
(248) 540-9270

**ANSWER TO COMPLAINT**

NOW COMES Defendant, Justin Kurtz, individually, by his attorneys and co-counsel, Christopher B. Vreeland and Dani K. Liblang, and answers Plaintiffs' Complaint as follows:

1. As to the allegations set forth in Paragraph 1 of Plaintiffs' Complaint, Defendant neither admits nor denies the allegations as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

2. As to the allegations set forth in Paragraph 2 of Plaintiffs' Complaint, Defendant neither admits nor denies all allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

3. As to the allegations set forth in Paragraph 3 of Plaintiffs' Complaint, Defendant neither admits nor denies all allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

4. Admitted that Defendant has publicly claimed that Plaintiffs towed his vehicle without sufficient legal reason and in furtherance of their apparent pattern and practice of towing lawfully parked vehicles after, or in conjunction with, unlawfully removing parking permits from the exteriors and interiors of said vehicles. Denied that such claims were false when made as they were, and remain, true. As to all other allegations set forth in Paragraph 4 of Plaintiffs' Complaint, Defendant neither admits nor denies said allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

5. Admitted that Defendant created a FaceBook page, located at <http://www.facebook.com/group.php?gid=288159562692>, where members of the public can join and post about their experiences with Plaintiffs. Admitted that, to date, over 10,000 individuals have joined the group with many posts critical of Plaintiffs. Denied that creating the subject FaceBook page is "misuse of the Internet" for reasons of untruth. Defendant affirmatively avers that his creation of the subject FaceBook page and his administration of same is constitutionally protected free speech. As to all other allegations set forth in Paragraph 5 of Plaintiffs' Complaint, Defendant neither admits nor denies said allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

6. Admitted, upon information and belief, that some apartment complexes have apparently recently discontinued using Plaintiffs' services. Denied that Defendant has caused Plaintiffs any economic or other damages as it is Plaintiffs' unlawful and unethical practices that have caused any problems Plaintiffs may be experiencing. As to all other allegations set forth in Paragraph 6 of Plaintiffs' Complaint, Defendant neither admits nor denies said allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

7. Admitted that Defendant does not personally know the facts underlying every post and link on the FaceBook page at issue as the posts and links are presently far too numerous to count. Denied that Defendant's conduct is libelous. As to all other allegations set forth in Paragraph 7 of Plaintiffs' Complaint, Defendant neither admits nor denies said allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

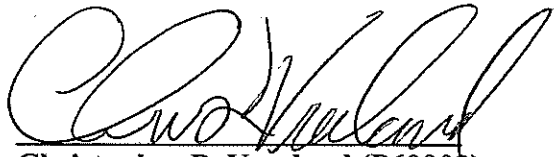
8. Denied that Paragraph 8 of Plaintiffs' Complaint sets forth any basis for any claim legally cognizable under law. To the extent that said allegations are somehow relevant to Plaintiffs' claimed damages, Defendant neither admits nor denies said allegations contained therein as he is without sufficient factual basis on which to form a belief and leaves Plaintiffs to their proofs.

WHEREFORE, Defendant respectfully requests that a judgment of no cause of action be awarded as to Plaintiff's Complaint and that Plaintiff be ordered to pay all attorney fees so wrongfully incurred.

**Respectfully submitted,**

**LAW OFFICE OF CHRISTOPHER B. VREELAND**

Dated: April 8, 2010

  
Christopher B. Vreeland (P60003)  
Attorney & Co-counsel for Justin Kurtz

**AFFIRMATIVE DEFENSES**

NOW COMES Defendant Justin Kurtz, individually, by his attorney, Christopher B. Vreeland, and by way of Affirmative Defenses states as follows:

1. The transaction complained of is, in whole or in part, void or voidable.
2. Plaintiffs' claims are barred, in whole or in part, by their failure to join a necessary party or parties.
3. Named Plaintiff T & J Towing lacks standing to sue in this matter as it is merely an assumed name for another entity or person and has no legal structure or existence of its own.
4. Plaintiffs' claims are barred by statute or statutes, including but not limited to, 47 U.S.C. § 230.
5. Plaintiffs' claims are barred in whole or in part by satisfaction.
6. Plaintiffs' claims are barred in whole or in part by payment.
7. Plaintiffs' claims are barred in whole or in part by want or failure of consideration.
8. Plaintiffs' claims are barred in whole or in part by unclean hands and criminality.
9. Plaintiffs' claims are barred in whole or in part by failure of condition precedent.
10. Plaintiffs' claims are barred in whole or in part by estoppel.
11. Plaintiffs' claims are barred by coercion and/or duress.

12. Some or all of Plaintiffs' claimed damages are the result of the negligence of Plaintiffs and/or Plaintiffs' own employees and/or agents.

13. Any damages sustained by Plaintiffs are offset by damages caused by Plaintiffs and owed to Defendant.

14. Defendant reserves the right to file additional affirmative defenses which become known during the course of discovery.

**Respectfully submitted,**

**LAW OFFICE OF CHRISTOPHER B. VREELAND**

**Dated: April 30, 2010**



**Christopher B. Vreeland (P60003)  
Attorney & Co-Counsel for Defendant**

### **DEFENDANT'S COUNTERCLAIMS**

#### **Introductory Summary:**

Defendant's vehicle was unlawfully towed from his assigned parking area at his apartment complex by employees of T & J Towing. Defendant had to pay \$118 to retrieve his vehicle. Defendant subsequently created a FaceBook page detailing his experience and many others responded with posts regarding similar experiences. Plaintiff filed a defamation suit in an apparent attempt to silence Defendant. Defendant brings counterclaims for abuse of process and other legal theories as set forth below.

### **GENERAL ALLEGATIONS**

1. The incident or incidents giving rise to these counterclaims occurred in Kalamazoo County, Michigan.

2. Jurisdiction lies in this Honorable Court as the amount of monetary damages sought is above \$25,000.00 and Defendant/Counter Plaintiff Justin Kurtz (“Kurtz”) seeks injunctive and other relief under the Michigan Consumer Protection Act.

3. At the time of the incident or incidents giving rise to these Counterclaims, the named Plaintiff/Counter Defendant, Joseph Bird (hereinafter “Bird”) was, upon information and belief, doing business as “T & J Towing” in Kalamazoo County, Michigan.

4. At the time of the incident or incidents giving rise to these Counterclaims, the named Plaintiff T & J Towing was a “doing business as” designation obtained from the Kalamazoo County Clerk by Bird.

5. At the time of the incidents giving rise to these Counterclaims, Bird was conducting regular and systematic business in Kalamazoo County, Michigan as a towing company providing towing services to the general public as well as a variety of apartment complexes and other businesses.

6. At all times relevant to these Counterclaims, Defendant/Counter Plaintiff Justin Kurtz (“Kurtz”) was an adult resident of Kalamazoo County, Michigan.

7. On or about January 29, 2010, Bird, either personally or through his employees, towed Kurtz’s vehicle from the apartment complex where Kurtz resided.

8. On or about January 29, 2010, Kurtz’s vehicle was parked in a designated parking area at the apartment complex when towed by Bird and/or his employees.

9. At or about the time Bird and/or his employees towed Kurtz’ vehicle, Bird and/or his employees scraped or otherwise removed the parking sticker from the window of Kurtz’s vehicle and disconnected the battery cable to disable the car alarm.

10. Kurtz subsequently paid Bird \$118.00 to retrieve his vehicle from Bird's place of business.

11. As a direct and proximate result of the actions and inactions of Bird set forth herein, Kurtz has suffered the damages and losses set forth below

**COUNTERCLAIM #1**  
**VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT ("MCPA")**

12. Kurtz incorporates by reference all preceding paragraphs above as Paragraph 12.

13. Kurtz is a person as the term "person" is defined in the MCPA, MCL 445.902(c).

14. The transactions complained of herein constitute "trade or commerce" as defined in the MCPA, MCL 445.902(d).

15. Kurtz rented his apartment and the associated parking space for personal use.

16. Bird has engaged in unfair and deceptive acts, methods and practices prohibited by MCL 445.903, including but not limited to:

a. Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction. MCL § 445.903(1)(n);

b. Failing to provide the promised benefit of a transaction. MCL § 445.903(1)(y).

17. The aforesaid violations were not due to bona fide error, inasmuch as Bird failed to have procedures in place designed to prevent the aforesaid violations.

18. As a direct and proximate result of Bird's wrongful conduct, Kurtz has sustained a loss within the meaning of the Act, including but not limited to, the losses and damages set forth herein as well as other consequential and incidental damages, including but not limited to, inconvenience and frustration.

19. Bird's conduct violated the MCPA.



WHEREFORE, Kurtz prays that this Honorable Court:

- A. Declare that Bird's acts, methods and practices described herein and proven at trial violate MCL § 445.903;
- B. Enter judgment against Bird and in favor of Kurtz in whatever amount is found to reasonably and adequately compensate Kurtz for damages and losses reasonably proven; and
- C. Grant such other and further relief as allowed under the MCPA and as this Court deems appropriate.

**COUNTERCLAIM II**  
**ABUSE OF PROCESS**

20. Kurtz incorporates by reference all preceding paragraphs above as Paragraph 20.

21. Bird has filed suit against Kurtz ostensibly seeking \$750,000.00 in damages, but his true motivation is to suppress truthful public discussion of his unlawful and unethical business practices.

22. Bird has abused the judicial process by using it for his ulterior motive or purpose to cause vexation, trouble, embarrassment, and damage to Kurtz in a vain attempt to make him shut down his FaceBook site.

23. As corroboration of Bird's improper purpose, it is notable that Bird has only targeted Kurtz in his suit, rather than naming the actual service provider for the web site at issue or any other posters on the web site. Further corroborating Bird's improper purpose is Bird's failure to specifically identify any comment authored by Kurtz as libelous.

24. Filing suit to prevent truthful public discussion of a business on a website is an improper purpose and abuse of the judicial process.

25. Even a cursory amount of legal research in this area would have informed Bird or his counsel that the maintenance of a public forum for comment is legally protected under, *inter alia*, 47 U.S.C. § 230.

26. As a proximate result of Bird's improper purpose and abuse of the judicial process, Kurtz has been subjected to unfounded claims of personal liability for comments made by others.

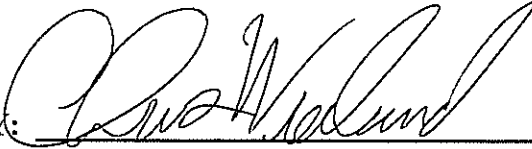
WHEREFORE, Kurtz prays that this Honorable Court:

- A. Declare that Bird's suit is an abuse of the judicial process;
- B. Enter judgment against Bird and in favor of Kurtz in whatever amount is found to reasonably and adequately compensate Kurtz for damages and losses reasonably proven; and
- C. Grant such other and further relief as allowed by law and as this Court deems appropriate.

Respectfully submitted,

LAW OFFICE OF CHRISTOPHER B. VREELAND

DATED: April 30, 2010

BY:   
Christopher B. Vreeland (P60003)  
Attorney & co-counsel for Justin Kurtz


**JURY DEMAND**

NOW COMES Justin Kurtz, by and through his attorneys, Law Office of Christopher B. Vreeland, and Liblang & Associates, P.C. and demands a trial by jury on all issues.

Respectfully submitted,

LAW OFFICE OF CHRISTOPHER B. VREELAND

DATED: April 30, 2010

BY:   
Christopher B. Vreeland (P60003)  
Attorney & co-counsel for Justin Kurtz

STATE OF MICHIGAN

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**PROOF OF SERVICE**

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Richard K. Burnham (P11427)  
Attorney for Plaintiffs  
303 Paw Paw St.  
Center Building, Ste. #1  
Paw Paw, MI 49079  
(269) 657-5566

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119 North Grand Street  
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**PROOF OF SERVICE**

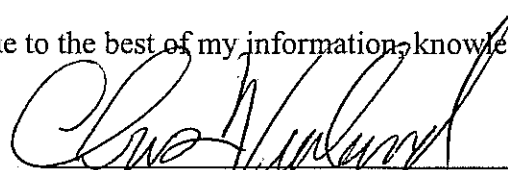
On the date written below, I served first class mail copies of the following:

- *Defendant/CounterPlaintiff's Answer to Complaint, Affirmative Defenses, Counterclaims, and Jury Demand;* and
- *Proof of Service* upon:

Richard K. Burnham, 303 Paw Paw St., Center Bldg., Ste. #1, Paw Paw, MI 49079;

I declare the aforementioned is true to the best of my information, knowledge and belief.

Dated: April 30, 2010

  
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Christopher B. Vreeland