

**LAW OFFICES OF  
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4739-2

August 12, 2008

Franklin Superior Court  
425 Main Street, P.O. Box 1573  
Greenfield, MA 01302

Attention: Civil Clerk's Office

Re: Michael Elbery v. Patlin Enterprises, et al, Civil Action No.: 07-132

Dear Sir/Madam:

Enclosed for filing and docketing, please find the following:

- **Answer, Counterclaim & Jury Trial Claim**
- **Certificate of Service**

Thank you for your attention.

Very truly yours,

LAW OFFICES OF  
CHRISTOPHER G. TIMSON, P.C.

CHRISTOPHER G. TIMSON  
CGT:elc  
Enclosure

cc: Daniel J. Finnegan, Esquire and Michael Elbery  
Mr. & Mrs. Steve Patlin

18. If any contractual obligation existed between plaintiff and defendants, **Nikki Patlin a/k/a Nikki Miller and Patlin Enterprises, Inc.** then plaintiff waived said contractual obligations.
19. If any contractual obligation existed between plaintiff and defendants, **Nikki Patlin a/k/a Nikki Miller and Patlin Enterprises, Inc.** then there was a novation of said contract under which defendants owe plaintiff nothing.
20. If plaintiff suffered damages which defendants are liable for (which defendants deny), then plaintiff failed to mitigate damages.
21. Plaintiff's released defendants **Nikki Patlin a/k/a Nikki Miller and Patlin Enterprises, Inc.** from liability for some or all of the Counts alleged in plaintiff's Complaint.
22. The claims asserted in the Complaint are barred in whole or in part by the doctrine of laches, estoppels, or waiver.
22. If defendants made any representations to the plaintiff and if the plaintiff relied on any such representations, such reliance was unreasonable or unjustified.
23. Any alleged contract between the parties was void ab initio because one or more necessary terms were omitted therefrom.

#### COUNTERCLAIM

1. Defendant-in-Counterclaim is Michael Elbery.
2. Plaintiff-in-Counterclaim is Patlin Enterprises, Inc.
3. Plaintiff-in-Counterclaim is Nicole Patlin Miller.
4. On or about July 2005, the defendant-in-counterclaim used such foul and abusive language with plaintiff-in-counterclaim, **Nikki Patlin Miller and Patlin Enterprises,**

**Inc.** that it was outrageous and beyond that which any human should endure causing plaintiff-in-counterclaim damages.

5. On or about April 11, 2007, the defendant-in-counterclaim used such foul and abusive language with plaintiff-in-counterclaim, Nicole Patlin Miller, including calling her a “stupid woman”, stating that “he could not understand how her husband was able to deal with her” and further that what she needed was “a good fu..ing” and called the Becket Building Inspector a “fu..ing municipal employee”, that it was beyond human decency and that which any human should have to bear causing plaintiff-in-counterclaim damages.
6. On several occasions, defendant-in-counterclaim used such abusive and foul language with plaintiffs-in-counterclaim that it was beyond human decency and that which a human should bear causing defendant-in-counterclaim damages.
7. Defendant-in-counterclaim represented himself to plaintiff-in-counterclaim, Patlin Enterprises, Inc., to be a contractor/builder who was capable of handling the construction/assembly of the Lincoln Logs kits on his own.
8. Defendant-in-counterclaim represented himself to plaintiff-in-counterclaim, Patlin Enterprises, Inc., to be the owner of the parcels of land in Becket, MA, upon which he was going to assemble the Lincoln Logs home kits.
9. Defendant-in-counterclaim attended two Lincoln Logs kit deliveries for other customers of Patlin Enterprises, Inc. At the Lincoln Logs delivery to John Amato, on or about 9/1/06, a customer<sup>4</sup> who planned to purchase more Lincoln Logs home kits, defendant-in-counterclaim Elbery told Amato he could supply Amato the materials Lincoln Logs had delivered for a fraction of the price charged by Lincoln Logs tortuously interfering with

plaintiff-in-counterclaim's contractual relationship with Amato. Defendant-in-counterclaim was so disruptive at the delivery of Lincoln Logs home to Mr. Fermaglich in Becket, MA, that the site contractor constructing the Lincoln Logs kit had to require defendant-in-counterclaim to leave the site, all resulting in damage to plaintiff-in-counterclaim Patlin Enterprises, Inc.

**Count I – Nicole Patlin Miller v. Michael Elbery**  
**TORT OF OUTRAGEOUS BEHAVIOR**

10. Plaintiff-in-counterclaim repeats and realleges paragraphs 1 – 9 as if set forth in full herein.

WHEREFORE, plaintiff-in-counterclaim, Nicole Patlin Miller, demands judgment against defendant-in-counterclaim in an amount to be determined by the Court, plus attorney's fees and costs.

**Count II – Patlin Enterprises, Inc. v. Michael Elbery**  
**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

11. Plaintiff-in-counterclaim repeats and realleges paragraphs 1 – 10 as if set forth in full herein.

WHEREFORE, plaintiff-in-counterclaim, Patlin Enterprises, Inc., demands judgment against defendant-in-counterclaim in an amount to be determined by the Court, plus attorney's fees and costs.

**Count III – Patlin Enterprises, Inc. v. Michael Elbery**  
**M.G.L. C. 93A**

12. Plaintiff-in-counterclaim repeats and realleges paragraphs 1 – 11 as if set forth in full herein.

13. Defendant-in-counterclaim is in business or commerce as a contractor/builder.

14. Defendant-in-counterclaim led plaintiff-in-counterclaim to believe he was a contractor who owned two properties on which he intended to construct/assemble Lincoln Logs home kits.

15. Defendant-in-counterclaim's actions in dealing with the plaintiff-in-counterclaim, Patlin Enterprises, Inc. were so unreasonable that they raise to the level of rascality required by the required by G.L. 93A, §11 in a business-to-business claim for unreasonable business practices.
16. Defendant-in-counterclaim was unreasonable, vulgar, and abusive in his telephone conversations with plaintiff-in-counterclaim's employee creating an unreasonable and hostile atmosphere which no business should be expected to deal with.
17. Despite the fact that plaintiff-in-counterclaim's written literature clearly states that a "typical construction cost is three times the Lincoln Logs kit cost" and that a higher multiple may be required depending upon the location, defendant-in-counterclaim unreasonably insisted that this language was something other than what it was resulting in many hours of frustration and waste of plaintiff-in-counterclaim's staff time.
18. When the Becket, MA, Building Inspector was prepared to approve the Lincoln Log plans for a home Lincoln Logs designed for defendant-in-counterclaim as a result of efforts by plaintiff-in-counterclaim employee, Nicole Patlin Miller, (despite defendant-in-counterclaim's outrageous and abusive behavior toward both Ms. Patlin Miller and the Becket Building Inspector) defendant-in-counterclaim took the plans from the Building Inspector so that they could not be approved, resulting in wasted time and effort by plaintiff-in-counterclaim, Patlin Enterprises, Inc.

WHEREFORE, plaintiff-in-counterclaim, Patlin Enterprises, Inc., demands judgment against defendant-in-counterclaim, Michael Elbery, in an amount to be determined by the Court, tripled, plus attorney's fees and costs, pursuant to M.G.L. c. 93A, §11.

**JURY TRIAL DEMAND**

DEFENDANTS/PLAINTIFFS-IN-COUNTERCLAIM DEMAND TRIAL BY JURY ON ALL CLAIMS AND ISSUES SO TRIABLE

Defendants/Plaintiffs-in-Counterclaim.  
NIKKI PATLIN MILLER and PATLIN ENTERPRISES, INC.

By their Attorneys.

LAW OFFICES OF  
CHRISTOPHER G. TIMSON, P.C.

A handwritten signature in black ink, appearing to be 'C. Timson', written over a horizontal line.

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