UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.03-RB-0743 (MJW)

SUZANNE SHELL
APRIL FIELDS, by and through her agent, Suzanne Shell
Plaintiffs

v.

ROCCO F. MECONI, Individually and Officially
FREMONT COUNTY DEPARTMENT OF HUMAN SERVICES, Officially
STEVE CLIFTON, Individually and Officially
DAWN RIVAS , Individually and Officially
TODD HANENBERG, Individually and Officially
DAN C. KENDER, Individually
ANNA HALL OWEN, Individually and Officially
Defendants

PLAINTIFF SHELL'S RESPONSE TO DEFENDANT'S, DANIEL C. KENDER'S MOTION TO DISMISS

COMES NOW, Plaintiff Suzanne Shell, *pro se*, requesting this Honorable Court to **deny** the defendant's, DANIEL C. KENDER'S Motion to Dismiss and in support thereof states as follows:

1. Plaintiff Shell appears *pro se*. The court shall construe the pleadings and papers of a pro se litigant liberally. See ***Haines v. Kerner,*** 404 U.S. 519, 520-21 (1972) (per curiam). ***Joseph v. United States Federal Bureau of Prisons***, 232 F.3d 901, 232 F.3d 901 (10th Cir. 10/16/2000)

2. Accepting as true the factual allegations in the complaint and drawing all reasonable inferences in favor of the plaintiff, the district court may appropriately dismiss a complaint only when it appears that the plaintiff can prove no set of

facts in support of his claims that would entitle him to relief. See ***Yoder v. Honeywell, Inc.***, 104 F.3d 1215, 1224 (10th Cir. 1997). See ***Bauchman v. West High Sch.***, 132 F.3d 542, 550 (10th Cir. 1997). ***Livingston v. Garcia***, 211 F.3d 1278, 211 F.3d 1278 (10th Cir. 04/26/2000)

3. Defendant Kender erroneously asserts that this § 1983 action was brought against him in his capacity as court-appointed counsel for Plaintiff Fields, which infers a professional capacity. The complaint correctly asserts his joinder in his individual capacity only.

4. Defendant Kender acted under color of state law as a willful participant in joint action with the State and state agents. To act "under color of" state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting "under color" of law for purposes of § 1983 actions. ***Adickes v. S. H. Kress & Co.***, 398 U.S. 144, 152 (1970); ***United States v. Price***, 383 U.S. 787, 794 (1966); ***Dennis V. Sparks et al.***, 449 U.S. 24, 101 S. Ct. 183, 66 L. Ed. 2d 185, 49 U.S.L.W. 4001 (11/17/80); ***National Collegiate Athletic Association v. Takanian***, 488 U.S. 179, 109 S. Ct. 454, 102 L. Ed. 2d 469, 57 U.S.L.W. 4050.

5. Any court proceeding constitutes state action. DHS employees are state actors. Defendant Kender's willful initiating of and participating in tthe sham legal process against the plaintiffs, and the fact that he acted together with, and obtained significant aid from state officials, and engaged in conduct otherwise chargeable

to the State, renders him liable for the deprivations suffered by the plaintiffs. Where, a § 1983 claim is based on the conduct of a private individual, that conduct constitutes state action if it is "`fairly attributable to the state.'" ***Pino***, 75 F.3d at 1465 (quoting ***Lugar***, 457 U.S. at 937). A private individual's conduct is "fairly attributable to the state" if two conditions are met:

> "First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the state is responsible. Second, the private party must have acted together with or . . . obtained significant aid from state officials or engaged in conduct otherwise chargeable to the State." Id. (quoting ***Wyatt v. Cole***, 504 U.S. 158, 162 (1992) (internal quotations and citation omitted)). ***Scott v. Hern,*** No. 98-1320 (10th Cir. 07/06/2000)

FREEDOM OF ASSOCIATION

6. Association for the purposes of issue advocacy is a well established constitutionally protected right. The action taken by the defendants effectively curtailed the plaintiffs' rights to freedom of association free from retaliation, recrimination, reprisal or sanctions. The fact that the defendants' actions in this case are unrelated to the plaintiff's protected liberties does not preclude the fact that the result of their actions curtailed the plaintiffs' protected liberties. In ***National Association for Advancement Colored People V. Alabama ex Rel. Patterson*** 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (06/30/58) the U. S. Supreme Court said:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. The Supreme Court has more than once recognized this by remarking upon the

close nexus between the freedoms of speech and assembly. ***De Jonge v. Oregon***, 299 U.S. 353, 364; ***Thomas v. Collins***, 323 U.S. 516, 530. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. ***See Gitlow v. New York***, 268 U.S. 652, 666; ***Palko v. Connecticut***, 302 U.S. 319, 324; ***Cantwell v. Connecticut***, 310 U.S. 296, 303; ***Staub v. City of Baxley***, 355 U.S. 313, 321. It is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

. . .In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action. . .

. . .Similar recognition of possible unconstitutional intimidation of the free exercise of the right to advocate underlay this Court's narrow construction of the authority of a congressional committee investigating lobbying and of an Act regulating lobbying, although in neither case was there an effort to suppress speech. ***United States v. Rumely***, 345 U.S. 41, 46-47; ***United States v. Harriss,*** 347 U.S. 612, 625-626. The governmental action challenged may appear to be totally unrelated to protected liberties. Statutes imposing taxes upon rather than prohibiting particular activity have been struck down when perceived to have the consequence of unduly curtailing the liberty of freedom of press assured under the Fourteenth Amendment. ***Grosjean v. American Press Co.***, 297 U.S. 233; ***Murdock v. Pennsylvania,*** 319 U.S. 105. . ."

7. The issue of freedom of association was clearly established in the middle of the 20th century during the Civil Rights movement. There, government agencies who

forwarded a policy of racial segregation deemed it necessary to attack civil rights advocates like the National Association for Colored Persons (NAACP) because their association with and advocacy on behalf of blacks jeopardized the status quo and threatened the entire institution of racial segregation. State agencies actually instituted UPL complaints, investigations and prosecution against NAACP lawyers in order to prevent their association with civil rights activists. In a series of cases, the Supreme Court consistently ruled that such conduct, in all forms, on the part of state agencies, violated the first amendment rights of the activists and advocates. For example: The rights of advocacy and to petition the government for redress of grievances are protected by the First Amendment. ***NAACP v. Button***, 37 U.S. 415, 429; ***Edwards v. South Carolina***, 372 U.S. 229, 235; and "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." ***NAACP v. Alabama ex rel. Patterson*** 357 U.S. 449 at 460. The fact that the facts in this case so closely parallel the facts in these and other historic decisions, coupled with the fact that this clearly established law was held in such contempt by the defendant that it didn't even enter into her consideration before she conspired and acted to violate those explicitly protected rights belonging to the plaintiffs, is both shocking and frightening.

8. The rights of the plaintiffs are intertwined through their mutual desire for their lawful association. Plaintiff Fields has the same right to have her story of

governmental abuse published/broadcast as plaintiff Shell has to engage in news gathering regarding Fields' story and to publish/broadcast it, therefore, they are jointly engaged in a common endeavor. Freedom of association is necessary for the advancement of other First Amendment freedoms. The First Amendment protects the right to associate with others in pursuit of a wide variety of political, advocacy, social, economic, educational, religious and cultural ends. When the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association is implicated. ***Boy Scouts of Am. v. Dale,*** 530 U. S. 640, 678 (2000). It only takes an infringement against one person to implicate the rights of other persons who wish to associate with the aggrieved person where the desire to associate is mutual.

VIEWPOINT DISCRIMINATION

9. Plaintiff Shell espouses and publishes a viewpoint which is unpopular with the defendants, a viewpoint which they wanted silenced. The defendants' actions have silenced both plaintiffs, prohibited the plaintiffs' assembling together, and prevented plaintiff Shell's legal and peaceful news gathering by force of law. ***Boy Scouts of Am. v. Dale,*** 530 U. S. 640, 678 (2000) expands this principle to unpopular issues:

> "And the fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.

> "In speaking of the Founders of this Nation, Justice Brandeis emphasized that they 'believed that the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth.' ***Whitney v. California***, 274 U. S. 357, 375 (concurring opinion). He continued: "Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law -- the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed." Id., at 375-376."

FREEDOM OF THE PRESS

10. Neither the court nor any state agency has the authority or jurisdiction to exercise editorial control over the content of plaintiff Shell's publications and broadcasts through state agency intervention or court edicts.

> "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time," ***Miami Herald Publishing Co. v. Tornillo***, 418 U.S. 241 (1974) .

11. The U. S. Supreme Court has upheld, without exception, the press's right to publish. In ***Cox Broadcasting Corp. v. Cohn***, 420 U.S. 469 (1975), the court found unconstitutional a civil damages award entered against a television station for broadcasting the name of a rape-murder victim which the station had obtained from courthouse records, In ***Oklahoma Publishing Co. v. Oklahoma County District Court***, 430 U.S. 308 (1977), the court found unconstitutional a state court's pretrial order enjoining the media from publishing the name or photograph

of an 11-year-old boy in connection with a juvenile proceeding involving that child which reporters had attended. Finally, in ***Smith v. Daily Mail Publishing Co.***, 443 U.S. 97 (1979), the court found unconstitutional the indictment of two newspapers for violating a state statute forbidding newspapers to publish, without written approval of the juvenile court, the name of any youth charged as a juvenile offender.

12. ***Ex parte Jackson***, 96 U.S. 727 , 733 clearly defines that the freedom of the press extends to all activities surrounding the dissemination of ideas: 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' Correspondingly, without a willing and accessible subject who has a story, or if the access to that subject is prevented by force of law, there is no story to publish, implicating freedom of the press, prior restraint and censorship.

13. Court hearings in Dependency and Neglect proceedings are open to the public pursuant to C.R.S. 19-1-106. What transpires in the court room is public property. Those who see and hear what transpired can report it, analyze it and editorialize on it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it. ***Craig v. Harney,*** 331 U.S. 367, 374 (1947), ***Cox Broadcasting Corp. et al. v. Cohn*** 1975.SCT.714, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328. See also ***Sheppard v. Maxwell***, 384 U.S. 333, 350 (1966) at 362-363; ***Estes v. Texas***, 381 U.S. 532, 541-542

(1965); ***Pennekamp v. Florida***, 328 U.S. 331 (1946); ***Bridges v. California,*** 314 U.S. 252 (1941).

RIGHT TO CONTRACT

14. Fields assigned a limited power of attorney to Shell on February 2, 2003, on her own initiative and without any influence whatsoever by Shell. The plaintiffs did not e-mail or speak by telephone prior to the assignment of Field's power of attorney. The first contact between the plaintiffs occurred in person on April 26, 2003. Defendant Kender has no legal authority as counsel for Fields to scrutinize this principle/agency relationship as it has no bearing on the merits of Fields' D&N proceeding. Defendant Kender falsely claimed plaintiff Shell had exerted undue influence over plaintiff Fields in order to obtain the power of attorney, over the objections of plaintiff Fields. The power of attorney was a condition of the contract in which plaintiff Shell would video document Fields' case for her proposed broadcast. The power of attorney legally permitted her to access the DHS case file (indeed, plaintiff Shell used to obtain a simple release of confidentiality signed by a parent until DHS refused them, accusing Shell of forging the signatures. Shell then obtained powers of attorney and required the parent to have them notarized so that she could not be falsely accused of forgery and her right to access the file could not be similarly denied). Kender has no statutory authority or jurisdiction to interfere with the contracts or contractual obligations between his client and a third party. Indeed, a court does not have the power to alter the terms of contracts, even through court order, ***Parrish***

Chiropractic Center v. Progressive Case. Inc., 874 P.2d 1049 (Colo. 1994). There is no case law in Colorado, or the 10th Circuit or the Supreme Court which permits any court to invalidate a power of attorney, nor any state or municipal agency to seek invalidation through any court, nor permitting a person's attorney to seek invalidation on behalf of his client when neither the agent nor the principle are seeking invalidation - indeed are resisting such invalidation. The defendant impaired the plaintiffs' rights to contract with wilful and wanton disregard for the law and the rights of the plaintiffs for the express purpose of preventing plaintiff Shell's news gathering activities and depriving the plaintiffs' of their rights to freedom of association. The fact that an attorney, with a high knowledge of the law, would act as though he were not bound by constitutional restraints and has the absolute right to act outside his legal authority to interfere with and impair the plaintiffs' rights to contract through the force of law, with a complete disregard for clearly established law to the contrary, is shocking to the conscience.

DUE PROCESS

15. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. ***Armstrong v. Manzo***, 380 U.S. 545. The hearing to join plaintiff Shell as a party to the Fields' D&N case did not afford the plaintiffs the opportunity to be heard. Plaintiff Shell was not allowed to participate in the hearing nor afforded an attorney as mandated by statute. As Fields' attorney, defendant Kender's contribution to the deprivation of rights was refusing to protect her legal interests or her wishes, thereby implicating plaintiff Shell's rights.

16. Procedural Due Process demands a fair procedure. ***Zinermon v. Burch***, 494 U.S. 113 (1990). The deprivation was achieved as the direct result of a one-sided hearing. A one-sided hearing is not a fair procedure. Defendant Kender actively participated in this setting up and executing this hearing in the absence of legal authority or jurisdiction to deprive the plaintiffs of their rights.

FACTS OF THE CASE

17. Plaintiff Shell is not the subject of a child abuse investigation or Dependency & Neglect action in Fremont County; nor a resident of Fremont County. Therefore, Fremont County Department of Human Services has no legitimate interest in impairing or infringing the legally exercised constitutionally protected rights and associations of a person who is not the subject of a child abuse investigation or court proceeding. Even assuming, arguendo, that DHS professes an interest in the activities and associations of a parent who is the subject of their actions, their interest is strictly limited to activities or associations involving parenting ability, home environment, or illegal or dangerous conduct in proximity to the child. It is indisputable that a respondent parent's lawful activities and associations with the general public, including Shell, which have no bearing on the parent's ability to provide a safe and appropriate home for the subject children, are not subject to DHS scrutiny nor do they fall under DHS jurisdiction. The defendants are retaliating, intimidating and impairing Shell's rights through their limited jurisdiction over April Fields.

18. Defendant Kender, on or about April 15, 2003, on his own initiative, acting in concert with the defendants, did request and obtain an order from Judge Julie

Marshall of the Fremont District Court, to appoint a Guardian ad litem for his client, April Fields. The purpose and effect of this request was to retaliate against, intimidate, interfere with and impair the rights of the plaintiffs to associate with each other for the purposes of advocacy and news gathering, and to impair their principal-agent relationship under a power of attorney. Any liable person who "causes" a citizen to be deprived of her constitutional rights can also be held liable. The requisite causal connection is satisfied if the defendant set in motion a series of events that the defendant knew or reasonably should have known would cause others to deprive the plaintiff of her constitutional rights. ***Snell v. Tunnell,*** 920 F.2d 673 (10th Cir. 11/30/1990). The aforementioned act constitutes intimidation and retaliation for the plaintiffs' exercising their right to freely associate without government intrusion or scrutiny.

19. Defendant Kender breached attorney-client privilege, and acted against Shell's explicit written instructions under her authority as Field's agent, when he advised the defendants that his client, Fields, was associating with Shell, and had assigned a limited power of attorney to Shell. He further retaliated by disclosing a privileged letter written by Shell under her authority as agent to Fields, to the other defendants. Immunity from state scrutiny is so related to the right to pursue lawful private interests privately and to associate freely with others in so doing to come within the protection of the Fourteenth Amendment. ***National Association for the Advancement of Colored People v. Alabama,*** 357 U.S. 449 (1958). There is no viable argument that could be made which would indicate that the disclosure of Field's lawful association with Shell to the other defendants was beneficial to

his client or served his client's legal interests. He acted to intimidate and retaliate, with the intent and full knowledge that said disclosure would result in the defendants taking further retaliatory actions against the plaintiffs which would impair and deny the plaintiffs' constitutionally protected rights of association and news gathering, and to contract. The Supreme Court has recognized the vital relationship between freedom to associate and privacy in one's associations. Inviolability of privacy in group or individual association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group or individual espouses dissident beliefs. ***United States v. Rumely***, supra, at 56-58 (concurring opinion). ***National Association for Advancement Colored People V. Alabama ex Rel. Patterson*** 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (06/30/58).

20. Defendant Kender further acted together with the other defendants to deny the plaintiffs' due process rights through the mechanism of the Department of Human Services motion and sham 'hearing' to add plaintiff Shell as a Special Respondent to plaintiff Fields' dependency case; for the purposes of issuing court orders preventing the plaintiffs from associating with or contacting each other. Kender failed and refused to object to this motion and hearing. Mere acquiescence with official misconduct is enough to incur § 1983 liability. ***Harlow v. Fitzgeral*** 457 U.S. 800 (1982).

21. Defendant Kender has attempted to concealed his participation in the events described above, and in other similar, subsequent events, from Fields. He acted without the knowledge and consent of his client, and in direct opposition to his

client's wishes, in opposition to his client's legal interests, to interfere with and impair the constitutionally protected rights of the plaintiffs. He further abdicated his professional responsibility to act as an adversary of the State, in favor of acting in concert with State agents to deprive the plaintiffs, of their constitutionally protected rights.

22. The effect of the aforementioned actions has been to retaliate and intimidate the plaintiffs into ceasing their exercise of their protected rights to freedom of association, freedom of the press, right to contract, and due process. Kender's actions and participation with the other defendants were intended to prevent the plaintiffs from associating for the purposes of advocacy and news gathering and to impair the plaintiffs' principal-agent relationship under their power of attorney and related contractual obligations.

23. Defendant Kender actively participated in denying the plaintiffs' aforementioned rights solely because of plaintiff Shell's viewpoint, which is highly critical of child protection practices and its practitioners, and in an effort to prevent outside scrutiny and/or the potential negative publication/broadcast of his and the other defendants' actions on plaintiff Fields' D&N case. Shell has been singled out for this treatment by Kender and the defendants. No other member of the media and no other advocate or activist is joined to any D&N case against his or her will for the purposes of retaliation and intimidation against freedom of association and/or freedom of the press and/or right to contract. This constitutes viewpoint discrimination. First Amendment principles start with the premise lying at the heart of the First Amendment that each person should decide for him or herself

the ideas and beliefs deserving of expression, consideration and adherence, ***Turner Broadcasting System, Inc. v. Federal Communication Comm'n,*** 114 S. Ct. 2445 (1994). Viewpoint discrimination is an egregious form of content discrimination. Content-based restrictions are subject to strict scrutiny. Viewpoint-based restrictions receive even more critical judicial treatment. ***Mesa v. White,*** 197 F.3d 1041 (10th Cir. 11/23/1999)

24. Plaintiff Shell is an author, publisher and independent documentary video producer. Independent media is protected by the First Amendment. ***Lovell v. City of Griffin***, 303 U.S. 444; ***Burstyn, Inc. v. Wilson***, 343 U.S. 495. By participating in retaliation and intimidation between a producer and her subject, the defendants have invoked a prior restraint on freedom of the press through retaliation and intimidation, without meeting the constitutional scrutiny required. ***New York Times Co. V. United States***, 403 U.S. 713 (1971); ***Bantam Books, Inc. v. Sullivan***, 372 U.S. 58, 70 (1963); ***Organization for a Better Austin v. Keefe***, 402 U.S. 415, 419 (1971). While Kender may decline to comment on camera for Shell's documentary, he cannot invoke or condone state action to retaliate, intimidate or act with state agents to retaliate against the plaintiffs because Fields' exercised her right to make her own decision in that regard, based on who she chooses to disclose her story to and thereby impair the rights of Shell.

25. Judge Julie Marshall has made no secret of her aversion to plaintiff Shell's advocacy and activism, and has historically used her bench to retaliate against any respondent parent who associated with Shell. This intimidation has succeeded in frightening respondent parents from contacting Shell. The defendants are all

aware of this bias and exploited it for their purposes. An “impartial decision maker" is an "essential" right in civil proceedings. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. ***Marshall v. Jerrico***, 446 U.S. 238, 242 (1980); ***Schweiker v. McClure***, 456 U.S. 188, 195 (1982).

26. Defendant Meconi shares Judge Marshall’s aversion and has also endeavored to impair Shell’s First Amendment rights in the past through retaliation, intimidation, threat and coercion and sham and vexatious legal filings. Fremont County Department of Human Services also practices retaliation and intimidation against respondent parents who associate with Shell and acts to prevent Shell’s association with respondent parents who seek association with her through the use of threats, intimidation and coercion. Kender reached a meeting of the minds and/or a mutual understanding with the other defendants, to acquiesce to and participate in retaliatory and intimidating acts, under the color of law to achieve the aforementioned deprivations. Simply put, Kender did not want his client, Fields, to associate with Shell, and did not want his client to assign agency to Shell under a power of attorney. He invoked retaliatory legal action to prevent that when Fields insisted on continuing with her association and right to contract

against his wishes. Further, he participated in and/or acquiesced to a corrupt legal process to achieve his goal.

27. Defendant Kender did not act independently inasmuch as he had an interest in the overall scheme, shared the same desire for the outcome, participated in or acquiesced to the scheme with state actors, and facilitated the successful outcome of that scheme. Express agreement is not required. ***Snell v. Tunnell***, 920 F.2d 673 (10th Cir. 11/30/1990)

28. Defendant Kender, as a private individual, is liable under § 1983 by virtue of his willful participation in joint action with the State or its agents to forward the interests of the state over the constitutionally protect rights of the plaintiffs, exclusive of the legal interests of his client; by employing intimidation and retaliation through state action against both plaintiffs for their exercise of their constitutionally protected rights, which exercise had no relevance to merits of his client's case, under the color of law.

29. There are material facts in dispute which MUST be addressed through discovery and therefore, a summary dismissal, as requested by Defendant Kender, is prohibited as a matter of law, F.R.C.P 56.

WHEREFORE , for the reasons stated herein, Plaintiff Shell respectfully requests this Honorable Court to **deny** Defendant Kender's MOTION TO DISMISS.

Respectfully submitted August 25, 2003

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached document **PLAINTIFF SHELL'S RESPONSE TO DEFENDANT'S, DANIEL C. KENDER'S MOTION TO DISMISS** were placed in the United States Mail, first class mail, postage prepaid on August 25, 2003

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Suzanne Shell - August 25, 2003