

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

GAMESTREAMER, INC.,

Plaintiff,

v.

CASE NO: 8:10-cv-1201-T-26EAJ

TIMOTHY M. ROBERTS, TERRANCE F.
TAYLOR, and PLATFORMZ, INC.,

Defendants.

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ORDER

Upon due consideration of the well-pleaded allegations of Plaintiff's First Amended Complaint, together with Defendants' submissions, it is ordered and adjudged that Defendants' Motion to Dismiss Count VI of the First Amended Complaint (Dkt. 71) is denied. After canvassing Florida law, the Court concludes that the issue of whether Plaintiff complied with the presuit requirements of section 772.11 of the Florida Statutes is more appropriately resolved within the context of a motion for summary judgment. See Nerbonne, N.A. v. Lake Bryant Int'l Prop., Inc., 689 So.2d 322, 325-26 (Fla. Dist. Ct. App. 1997); Seymour v. Adams, 638 So.2d 1044, 1049 (Fla. Dist. Ct. App. 1994). Defendants shall file their answer and defenses to all counts of the First Amended Complaint within ten (10) days of this order.

DONE AND ORDERED at Tampa, Florida, on September 1, 2010.

s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record