IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND GREENBELT DIVISION

COSTAR REALTY INFORMATION, INC., and COSTAR GROUP, INC.,

Plaintiffs,

v.

KLEIN & HEUCHAN, INC. and SCOTT BELL,

Civil Action No. 8:08-cv-1575-AW

Defendants.

COSTAR'S RESPONSE IN OPPOSITION TO DEFENDANT K&H'S MOTION FOR LEAVE TO FILE ITS SUPPLEMENTAL REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

Plaintiffs CoStar Realty Information and CoStar Group, Inc. (collectively, "CoStar"), by their attorneys, submit this Response in Opposition to Defendant Klein & Heuchan, Inc.'s ("K&H") Motion for Leave to File its Supplemental Reply Memorandum in Support of its Motion to Dismiss Based on Recent Events (D.E. 19).

Local Rule 105.2.a prohibits surreply memoranda unless otherwise ordered by the court. K&H should not be granted leave to file a surreply (or a "supplemental reply") because it has identified no new circumstances to justify its filing. K&H argues that CoStar's opposition to K&H's motion to dismiss is moot in light of the answer and counterclaim filed by CoStar in the parallel case pending before the District Court for the Middle District of Florida. D.E. 19 at 102; D.E. 19-2 at 2. But Costar's filing of its answer and counterclaims in the Florida case – which was required once the Florida court denied CoStar's motion to dismiss – does not change the fact that this Court is the appropriate venue for

resolution of the parties' dispute. CoStar's preservation of its rights and claims in the Florida court through the filing of an answer and counterclaims does not moot CoStar's opposition in any way. Indeed, CoStar expressly noted in each counterclaim filed in Florida that the claim is "currently pending in the U.S. District Court for the District of Maryland ...," (D.E. 19-3 at ¶¶ 34, 45, 51, 56), and thus no waiver can be implied as a result of its filing of those claims. And, as CoStar explained in its opposition to K&H's motion to dismiss, K&H inappropriately filed its declaratory judgment action in Florida for forum shopping purposes in anticipation of litigation. D.E. 13 at 14-16. Because CoStar filed a complete action that included all claims and all parties relevant to the parties' dispute in this Court, it is this Court that is the appropriate venue for resolution of that dispute. Id. Moreover, as is also set forth by CoStar in its opposition, the convenience of the parties and the interests of justice strongly favor Maryland as a venue under 28 U.S.C. § 1404(a). D.E. 13 at 16-17. Put simply, Maryland – and not Florida – is the proper venue for this case and K&H's motion to dismiss should be denied for all of the reasons stated in CoStar's opposition motion to dismiss. And because K&H's supplemental reply raises no new issues that would affect the outcome of its motion to dismiss, its motion for leave to file a supplemental reply should be denied.

Dated: December 13, 2008

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that service required by Fed. R. Civ. P. 5 was made, and that a true copy of the above document was served upon the attorneys of record by electronically filing the document with the Clerk of Court using the CM/ECF system, which caused a Notice of Electronic Filing (NEF) to be sent to the following on December 13, 2008:

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