UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WIRE TECH INC.,

Plaintiff,

v.

Case No. 22-C-1007

DAVID G. NOLAN,

Defendant.

DECISION AND ORDER

Plaintiff Wire Tech Inc. brought this action against its former employee, Defendant David G. Nolan, asserting violations of the Computer Fraud and Abuse Act as well as claims of breach of contract, breach of fiduciary duties, and intentional destruction of property. In particular, Plaintiff alleges that Defendant intentionally, and without authorization, wiped all data from the company-owned electronics in his possession, including a phone and laptop computer, just prior to his resignation, resulting in the permanent deletion and destruction of Plaintiff's confidential data. This matter comes before the court on Plaintiff's partial motion to dismiss Defendant's first count of the counterclaim. Defendant's first counterclaim asserts that Plaintiff's claims are "frivolous and are brought without just cause." Dkt. No. 7, ¶ 71. Defendant has not responded to the motion and the time to do so has passed.

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure challenges the sufficiency of the pleading to state a claim upon which relief may be granted. A counterclaim asserting that an action is frivolous cannot be brought as a "freestanding counterclaim." *See Reyes v. ML Enters.*, No. 21-C-437, 2021 WL 2226108, at *2 (E.D. Wis. June 2, 2021). Instead, a

defendant can seek sanctions for the filing of a frivolous lawsuit through a Rule 11 motion. *See* Fed. R. Civ. P. 11. In short, Defendant's first counterclaim fails to state a claim upon which relief may be granted and must be dismissed.

IT IS THEREFORE ORDERED that Plaintiff's partial motion to dismiss Defendant's first count of the counterclaim (Dkt. No. 12) is **GRANTED**. Defendant's first counterclaim is dismissed.

Dated at Green Bay, Wisconsin this 12th day of December, 2022.

s/ William C. Griesbach
William C. Griesbach
United States District Judge