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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST,

Plaintiffs,

v.

ETREPPID TECHNOLOGIES, LLC;
WARREN TREPP; and the UNITED
STATES DEPARTMENT OF DEFENSE,

Defendants.

AND ALL RELATED MATTERS.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

ORDER

Presently before the Court is Motion of Defendants and Counterclaimants for Judgment on the Pleadings (3:06-CV-00145-PMP-VPC, Doc. #24), filed on May 15, 2006. Plaintiff and Cross-Defendant eTreppid and Cross-Defendant Warren Trepp (“eTreppid”) filed an Opposition (3:06-CV-00145-PMP-VPC, Doc. #28) on June 1, 2006. Defendants and Counter-Claimants Dennis Montgomery and the Montgomery Family Trust (“Montgomery”) filed a Reply (3:06-CV-00145-PMP-VPC, Doc. #41) on June 27, 2006.

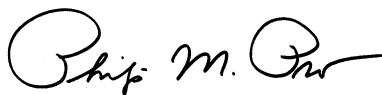
Montgomery moves for judgment on the pleadings as to eTreppid’s claims for misappropriation of trade secrets, breach of contract, and conversion. eTreppid responds that the motion is premature because at the time Montgomery filed the motion the pleadings were not closed as the United States Department of Defense had not yet responded to the third party claim against it.

1 A motion for judgment on the pleadings brought pursuant to Federal Rule of
2 Civil Procedure 12(c) may be brought “[a]fter the pleadings are closed but within such time
3 as not to delay the trial” Federal Rule of Civil Procedure 7 defines pleadings as “a
4 complaint and an answer; a reply to a counterclaim denominated as such; an answer to a
5 cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who
6 was not an original party is summoned under the provisions of Rule 14; and a third-party
7 answer if a third-party complaint is served.” Fed. R. Civ. P. 7(a). Reading Rules 7(a) and
8 12(c) together, the pleadings are closed once a complaint and answer have been filed,
9 “assuming . . . that no counterclaim or cross-claim is made.” Doe v. United States, 419
10 F.3d 1058, 1061 (9th Cir. 2005). A motion to dismiss does not constitute a pleading, and
11 thus the pleadings are not “closed” upon a defendant filing a motion to dismiss. Id. A Rule
12 12(c) motion filed before the pleadings are closed is “procedurally premature” and the
13 Court must deny it. Id.

14 At the time Montgomery filed his motion for judgment on the pleadings, neither
15 eTreppid nor the United States Department of Defense had filed a reply to Montgomery’s
16 Answer to First Amended Complaint and First Amended Counterclaim. As in Doe,
17 eTreppid and the United States have filed motions to dismiss Montgomery’s counterclaim,
18 which do not constitute pleadings. The pleadings therefore are not “closed” and the Court
19 will deny without prejudice Montgomery’s procedurally premature motion for judgment on
20 the pleadings.

21 IT IS THEREFORE ORDERED that Motion of Defendants and
22 Counterclaimants for Judgment on the Pleadings (Doc. #24) is hereby DENIED.

23 DATED: March 19, 2007.

24 

25 _____
26 PHILIP M. PRO
United States District Judge