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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF NEVADA**

10 FRIENDLY CAPITAL PARTNERS, L.P., a  
California Limited Partnership,

Case No. 3:07-cv-00250-PMP-VPC

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12  
13 Plaintiffs,

14 vs.

**RESPONSE TO SUPPLEMENTAL  
BRIEF OF DENNIS MONTGOMERY,  
BRENDA MONTGOMERY, AND THE  
MONTGOMERY FAMILY TRUST  
REGARDING DIVERSITY  
JURISDICTION**

15 DENNIS MONTGOMERY, BRENDA  
MONTGOMERY, and the MONTGOMERY  
FAMILY TRUST, a California trust, and DOES 1  
16 through 10, individually,

17 Defendants  
18 \_\_\_\_\_/

19 DENNIS MONTGOMERY, BRENDA  
MONTGOMERY, and the MONTGOMERY  
FAMILY TRUST,

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21 Counterclaimants,

22 vs.

23 FRIENDLY CAPITAL PARTNERS, L.P., a  
California Limited Partnership; WARREN TREPP,  
24 an individual, ETREPPID TECHNOLOGIES,  
25 LLC, a Nevada Limited Liability Company, and  
DOES 1 – 10 inclusive,

26 Counterdefendants.  
27 \_\_\_\_\_/

**RESPONSE TO SUPPLEMENTAL BRIEF OF DENNIS MONTGOMERY,  
BRENDA MONTGOMERY, AND THE MONTGOMERY FAMILY TRUST REGARDING  
DIVERSITY JURISDICTION**

Plaintiff-Counterdefendant, Friendly Capital Partners, L.P. (“FCP”), and Counterdefendants, Warren Trepp (“Trepp”) and eTreppid Technologies, LLC (“eTreppid”), by and through their undersigned counsel of record, hereby submit their Response to Supplemental Brief of Dennis Montgomery, Brenda Montgomery, and the Montgomery Family Trust (collectively “Montgomery”) Regarding Diversity Jurisdiction.

FCP, Trepp, and eTreppid (collectively “Counterdefendants”) do not take issue with Montgomery’s legal statements regarding this Court’s diversity jurisdiction.<sup>1</sup> That is to say, Counterdefendants agree that (1) complete diversity of citizenship of the parties must exist at the time of filing the complaint and at the time of removal; (2) a trust’s citizenship is determined by the citizenship of its trustees; and (3) a party’s change in domicile after the time of removal does not affect the Court’s diversity jurisdiction. However, Counterdefendants reserve the right to move to remand this action for lack of subject matter jurisdiction in the event that discovery in this matter reveals that Montgomery was domiciled in California either at the time of filing the complaint or at the time of removal to this Court. At this point, Counterdefendants have no choice but to accept as true the factual assertions set forth in Montgomery’s Declaration.

As to the last section of Montgomery’s Supplemental Brief, which offers a short and conclusory analysis of *Delew v. Wagner*, 143 F.3d 1219 (9th Cir. 1998), Counterdefendants point this Court to FCP’s and Trepp’s Supplemental Brief in Support of Motion to Dismiss First Amended Counterclaims, or, in the Alternative, For a More Definite Statement, where FCP and Trepp set forth a

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<sup>1</sup> As set forth below, Counterdefendants adamantly oppose Montgomery’s analysis of *Delew v. Wagner*, 143 F.3d 1219 (9th Cir. 1998).

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1 detailed analysis showing why *Delew* is inapplicable and Montgomery's First Amended Counterclaims  
2 must be dismissed.

3 DATED: This 6<sup>th</sup> day of February, 2008.

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5 \_\_\_\_\_/s/  
6 J. Stephen Peek, Esq. (NV Bar #1758)  
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Attorneys for Plaintiff/Counterdefendants  
Friendly Capital Partners, L.P., eTreppid  
Technologies, LLC and Warren Trepp

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**PROOF OF SERVICE**

I, Gaylene Silva, declare:

I am employed in the **City of Reno, County of Washoe, State of Nevada**, by the law offices of Hale Lane Peek Dennison and Howard. My business address is: **5441 Kietzke Lane, Second Floor, Reno, Nevada 89511**. I am over the age of 18 years and not a party to this action

I am readily familiar with Hale Lane Peek Dennison and Howard’s practice for collection of mail, delivery of its hand-deliveries and their process of faxes.

On February 6, 2008, I caused the foregoing **RESPONSE TO SUPPLEMENTAL BRIEF OF DENNIS MONTGOMERY, BRENDA MONTGOMERY, AND THE MONTGOMERY FAMILY TRUST REGARDING DIVERSITY JURISDICTION** to be:

  X   filed the document electronically with the U.S. District Court and therefore the court’s computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail addresses:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on February 6, 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
Gaylene Silva