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(CMorgan@TaftLaw.com)  
*Attorneys for Plaintiff*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

Data Sales Co. Inc., a Minnesota  
corporation,

Plaintiff,

v.

Path Networks, Inc., a Delaware  
corporation,

Defendant.

Case No. CV2025-027770

**REPLY IN SUPPORT OF RENEWED  
APPLICATION FOR ORDER TO  
SHOW CAUSE WHY PLAINTIFF  
SHOULD NOT BE GRANTED THE  
PROVISIONAL REMEDY OF  
REPLEVIN  
PURSUANT TO EITHER A.R.S. § 12-  
2402 OR A.R.S. § 12-2403**

Before the Hon. Joseph Kreamer

Path’s Response only proves that (1) Data Sales’ Product has likely been squandered, because apparently Path cannot tell us where the Product is located, (2) this entire situation – of which Path is the architect – is some sort of elaborate shell game designed to hide the Product and keep it from Data Sales while enabling Path to avoid paying Data Sales, (3) Data Sales is sure to succeed on the merits, and (4) Path’s longshot counterclaim is dead on arrival.<sup>1</sup>

**I. DATA SALES NEVER AGREED TO FOREGO PROVISIONAL REMEDIES**

Path asserts that this Renewed Application is improper because Data Sales somehow agreed to forego replevin in the future. Data Sales did no such thing. To the contrary, when the parties discussed how to avoid the first provisional remedies hearing, Data Sales rejected Path’s request that no additional provisional remedies be sought in the future, and

<sup>1</sup> All terms defined in Data Sales’ Renewed Application shall have the same definition in this Reply.

1 Path acknowledged and agreed to that premise. *See Exhibit 1.*<sup>2</sup> Data Sales then had, as it  
2 has now, concerns that Path was not acting in good faith and is placing the Product at risk.  
3 Those concerns have proven valid, because even in its Response, Path refuses to state where  
4 the Product is or why what was delivered consisted of a mish-mash of Data Sales property,  
5 someone else’s property, or property whose provenance cannot be determined. With its  
6 ruse to forestall provisional remedies, Path once again pulled the wool over Data Sale’s  
7 eyes, leaving it no choice but to again seek provisional relief.

8 **II. PATH HAS NO COUNTERCLAIM**

9 Path’s counterclaim, distilled, is that Data Sales “breached the leases by frustrating  
10 and refusing to honor Path’s right to exercise its buyout option upon expiration of the lease  
11 term.” Response at 2:11-15. But Path knows very well that it had no such right.

12 The parties’ contract is clear:

13 **9. Lease End Options**

14 Upon written notice given at least ninety (90) days prior to expiration  
15 of the Lease Term, and provided Lessee is not in default under any  
16 Schedule Lessee may (i) exercise any purchase option set forth on the  
17 Schedule, or (ii) renew the Schedule for a mutually agreed upon fixed-  
18 term extension period, or (iii) return the Product to Lessor at the  
19 expiration date of the Schedule pursuant to Section 6 above.

20 Verified Complaint at Ex. A (Master Lease at ¶ 9). Path was in breach and default under  
21 the lease – long before the expiration of the lease term – because it has failed to pay Data  
22 Sales hundreds of thousands of dollars. *See* Verified Complaint at ¶¶26-34 For this reason  
23 alone, Path’s counterclaim fails and Data Sales is likely to prevail on the merits.

24  
25 \_\_\_\_\_  
26 <sup>2</sup> This is part of a settlement communication, but it is not being used to prove liability or  
27 damages. It is being used to illustrate that Data Sales refused to waive its right to seek  
28 additional provisional relief. Thus, this Court can consider the communication without  
running afoul of Arizona Rule of Evidence 408.

1 But, even assuming Path had the right to exercise a buyout option and the Lease  
2 was silent on whether that option may or may not be exercised if Path is in breach, Path  
3 was still in material breach of the Lease for having failed to pay Data Sales as contractually  
4 agreed. And as a matter of law, ““an uncured material breach of contract relieves the non-  
5 breaching party from the duty to perform and can discharge that party from the contract.””  
6 *ABCDW, LLC v. Banning*, 241 Ariz. 427, 439, ¶ 55 (App. 2016) quoting *Murphy Farrell*  
7 *Dev., LLP v. Sourant*, 229 Ariz. 124, 133, ¶ 33 (App. 2012).

8 Path has no viable defense, so Path has manufactured a dubious and doomed  
9 counterclaim. It has neither merit nor a remote chance of success.

10 **III. PATH’S LACK OF SPECIFICITY ARGUMENT ACTUALLY EMPHASIZES WHY**  
11 **REPLEVIN AND AN ORDER IDENTIFYING WHERE THE PRODUCT IS LOCATED**  
12 **ARE NECESSARY**

13 Path argues on the one hand that this Court cannot compel Path to state where the  
14 Product is located, or marshal it for the Sheriff, but argues on the other hand that replevin  
15 is unavailable because Data Sales has failed to describe the Product adequately enough for  
16 the Sheriff to recover the Product. These contradictory arguments are as unavailing as they  
17 are revealing.

18 First, Data Sales has adequately described the Product. *See* Renewed Application at  
19 Ex. 1 (at ¶¶7-8 and Exs. 1-2). If Path takes issue with the description of the Product, then  
20 Path can either describe it better, or marshal it for the Sheriff for pick-up. Afterall, Path  
21 presumably possesses the Product and is in the best position to identify it or gather it for  
22 retrieval. Path knows what items make up Data Sales’ Product and where it is located.  
23 Legal sophistry cannot save Path from this reality or the outcome it creates.

24 Second, this Court has the inherent power to issue orders necessary to effectuate its  
25 jurisdiction and powers. *See Arpaio v. Baca*, 217 Ariz. 570, 577, ¶ 23 (App. 2008) (holding  
26 that “a court has the inherent authority to issue orders necessary for the ordinary and  
27 efficient exercise of its jurisdiction.”); *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968)  
28 (“Courts have inherent power to do all things reasonably necessary for the administration

1 of justice.”). The replevin statutes do not need to spell out every single thing the Court can  
2 or cannot do when carrying out the statute or enabling one who invokes the statute to obtain  
3 its benefits. It defies law, logic, and even the most rudimentary sense of justice to believe  
4 that this Court cannot order Path to account for where the Product is located, or marshal it  
5 so the Sheriff can execute a writ, simply because Path will not reveal where the Product is  
6 or help gather it. Path would have this Court effectuate (if not endorse) Path’s evasiveness  
7 and misconduct so that Path can reap the rewards and leave Data Sales with nothing.  
8 Fortunately, it is a well-settled tenet of the law that Path cannot profit from its own  
9 wrongdoing, and thus, its position collapses. *See Premier Consulting & Mgmt. Sols., LLC*  
10 *v. Peace Releaf Ctr. I*, 257 Ariz. 80, 89, ¶ 35 (App. 2024) (recognizing “Arizona’s general  
11 policy of the law to bar a party from benefitting from his own wrong or gaining a windfall.”  
12 (cleaned up)); *Pearson v. Target Corp.*, 968 F.3d 827, 831 (7th Cir. 2020) (“It has long  
13 been axiomatic that no person shall profit by his own wrong.” (cleaned up)).

14 **IV. CONCLUSION**

15 Path’s deflections are unpersuasive. Path has Data Sales’ Product, and Path should  
16 be made to account for and marshal that Product so that Data Sales can avail itself of its  
17 legal right to the provisional remedy of replevin.

18 RESPECTFULLY SUBMITTED: November 10, 2025.

19 TAFT STETTINIUS & HOLLISTER LLP

20 By /s/ Craig A. Morgan

21 Craig A. Morgan  
22 2555 East Camelback Road, Suite 1050  
23 Phoenix, Arizona 85016  
24 *Attorneys for Plaintiff Data Sales, Inc.*

25  
26  
27  
28

1 **ORIGINAL** of the foregoing electronically  
filed via TurboCourt and **COPY** sent via  
2 email on November 10, 2025 to:

3 Bradley D. Pack  
Michael P. Rolland  
4 Andrew O'Keeffe  
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Phoenix, Arizona 85004  
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*Counsel for Defendant*

8  
9 /s/ Ella Meshke

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**EXHIBIT 1**

**EXHIBIT 1**

## Meshke, Ella

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**From:** Andrew O'Keefe <aro@eblawyers.com>  
**Sent:** Monday, August 25, 2025 9:42 AM  
**To:** Morgan, Craig  
**Cc:** Bradley D. Pack; Michael P. Rolland; Jorissen, James  
**Subject:** RE: Rule 408 Settlement Communication - Data Sales Co., Inc. v. Path Network, Inc. - CV2025-027770  
**Attachments:** Stip re Withdrawal of Provisional Remedy Ap - .docx; Order Granting Stipulation - .docx

Craig,

Understood. Path is okay with Data Sales not giving up the right to seek additional interim relief.

Please find attached a draft stipulation and proposed form of order. Please let me know what edits/comments you may have.

Otherwise, please let me know if this stipulation is okay to sign on your behalf and lodge with the Court.

Thank you.

Andrew R. O'Keefe, Associate Attorney  
**ENGELMAN BERGER, P.C.**  
2800 North Central Avenue, Suite 1200, Phoenix, Arizona 85004  
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**From:** Morgan, Craig <cmorgan@taftlaw.com>  
**Sent:** Monday, August 25, 2025 8:49 AM  
**To:** Andrew O'Keefe <aro@eblawyers.com>  
**Cc:** Bradley D. Pack <bdp@eblawyers.com>; Michael P. Rolland <mpr@eblawyers.com>; Jorissen, James <JJorissen@Taftlaw.com>  
**Subject:** RE: Rule 408 Settlement Communication - Data Sales Co., Inc. v. Path Network, Inc. - CV2025-027770

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Andrew,

Data Sales will not give up the right to seek additional interim relief, because its still assessing the scope of the breach and has concerns not all collateral will be properly accounted for.

Thanks,

Craig

# Craig Morgan

Phoenix Partner-In-Charge | He/Him/His

Taft/

Sherman  
& Howard

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**Sherman & Howard  
has joined Taft.**

**Effective January 1, 2025. Learn more here.**

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**From:** Andrew O'Keefe <[aro@eblawyers.com](mailto:aro@eblawyers.com)>

**Sent:** Saturday, August 23, 2025 10:30 AM

**To:** Morgan, Craig <[cmorgan@taftlaw.com](mailto:cmorgan@taftlaw.com)>

**Cc:** Bradley D. Pack <[bdp@eblawyers.com](mailto:bdp@eblawyers.com)>; Michael P. Rolland <[mpr@eblawyers.com](mailto:mpr@eblawyers.com)>; Jorissen, James <[JJorissen@Taftlaw.com](mailto:JJorissen@Taftlaw.com)>

**Subject:** RE: Rule 408 Settlement Communication - Data Sales Co., Inc. v. Path Network, Inc. - CV2025-027770

Craig,

Thank you for the response. Path will agree to accept Data Sales' proposal, subject to the conditions below.

Path will agree to return the Surrendered Equipment to Data Sales within 3 days by ground shipment on a standard delivery schedule provided Data Sales agrees to withdraw its application for replevin and agrees it won't file any further applications seeking pre-judgment recovery of the remaining equipment.

Data Sales would not need to post a bond, and the stipulation would vacate the September 2 hearing.

As a show of good faith, Path is willing to pay for the cost to ship the equipment at its own expense to a location of Data Sales' choosing. Please let us know what location Data Sales would like the Surrendered Equipment to be shipped to.

Finally, this stipulation won't be deemed any type of admission of liability or waiver of any defense on the merits and all rights, claims, objections and defenses will be preserved with respect to the causes of action alleged in the complaint.

Please let me know if Data Sales is agreeable to these further conditions. Thank you.

Andrew R. O'Keefe, Associate Attorney  
**ENGELMAN BERGER, P.C.**

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---

**From:** Morgan, Craig <[cmorgan@taftlaw.com](mailto:cmorgan@taftlaw.com)>  
**Sent:** Friday, August 22, 2025 1:12 PM  
**To:** Andrew O'Keefe <[aro@eblawyers.com](mailto:aro@eblawyers.com)>  
**Cc:** Bradley D. Pack <[bdp@eblawyers.com](mailto:bdp@eblawyers.com)>; Michael P. Rolland <[mpr@eblawyers.com](mailto:mpr@eblawyers.com)>; Jorissen, James <[JJorissen@Taftlaw.com](mailto:JJorissen@Taftlaw.com)>  
**Subject:** RE: Rule 408 Settlement Communication - Data Sales Co., Inc. v. Path Network, Inc. - CV2025-027770

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Andrew,

Thank you for your August 22, 2025 letter. Data Sales rejects Path's offer. Path has exhausted any credit or trust it may have had with Data Sales. Path owes Data Sales over \$1 million. \$225k does not even open the door to additional settlement discussions, let alone get us there.

That said, we are willing to forego the upcoming hearing if your client will stipulate to entry of an order directing it to immediately return the collateral identified in your August 22 letter, without the need to post a bond. We can file a stipulation and order, and in the stipulation we can indicate that there is no longer a need for a hearing.

As your August 22 letter indicated, time is of the essence. So, this offer expires at 10:00 am, AZ, on Monday August 25, 2025.

If you want to chat, please give me a call.

Be well,

-Craig

## Craig Morgan

Phoenix Partner-In-Charge | He/Him/His



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Direct: 602.240.3062 | Office: 602.240.3000 | Mobile: 480-332-6321 | Email: [cmorgan@taftlaw.com](mailto:cmorgan@taftlaw.com)

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**Cc:** Bradley D. Pack <[bdp@eblawyers.com](mailto:bdp@eblawyers.com)>; Michael P. Rolland <[mpr@eblawyers.com](mailto:mpr@eblawyers.com)>  
**Subject:** Rule 408 Settlement Communication - Data Sales Co., Inc. v. Path Network, Inc. - CV2025-027770

Craig,

Please find attached settlement correspondence pursuant to the above-captioned lawsuit. Please let me know if you wish to discuss this further.

Thank you.

Andrew R. O'Keefe, Associate Attorney  
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