

1 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

2 Attorneys at Law
3 1400 E. Southern Avenue, Suite 400
4 Tempe, Arizona 85282-5691
5 (480) 427-2800, Facsimile (480) 427-2801
6 minuteentries@carpenterhazlewood.com
(Curtis S. Ekmark – SBN 014773)
curtis.ekmark@carpenterhazlewood.com
(Gregory A. Stein – SBN 030746)
greg.stein@carpenterhazlewood.com
CAU.DESMTNMA.0003

7 Attorneys for Defendants

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 **NICDON 10663, LLC, an Arizona limited**
11 **liability company,**

12 **Plaintiff,**

13 **v.**

14 **DESERT MOUNTAIN MASTER**
15 **ASSOCIATION, an Arizona nonprofit**
16 **corporation,**

17 **Defendant.**

Case No. CV2018-015165

**DEFENDANT’S RESPONSES TO
PLAINTIFF’S FIRST SET OF NON-
UNIFORM INTERROGATORIES TO
DEFENDANT AND SUPPLEMENTAL
REQUEST FOR PRODUCTION**

(Assigned to the
Honorable Colleen French)

18 Defendant Desert Mountain Master Association, Inc. (the “Association”), by and
19 through undersigned counsel and pursuant to Ariz. R. Civ. P. 33 and 34, hereby submits
20 its responses to the First Set of Non-Uniform Interrogatories to Defendant and
21 Supplemental Request for Production propounded by Plaintiff Nicdon 10663, LLC
22 (“Plaintiff” and/or “Nicdon”). The Association expressly reserves the right to supplement
23 its responses if and when additional discoverable documentation becomes available.
24

25 The Association generally objects to the number of requests for production and
26 non-uniform interrogatories that Plaintiff propounded as part of its First Request for
27
28

1 Production and First Set of Non-Uniform Interrogatories and Supplemental Request for
2 Production. This is a Tier 2 case and, as such, each party is permitted no more than “10
3 Rule 34 requests for production” and “10 Rule 33 interrogatories” without seeking leave
4 of court. *See* Ariz. R. Civ. P. 26.2(f)(2). Discovery requests include their distinct subparts.
5 *See* Ariz. R. Civ. P. 33(a)(2). When including distinct subparts, Plaintiff clearly
6 propounded more than 10 Rule 34 requests for production and 10 Rule 33 interrogatories
7 through its First Request for Production and First Set of Non-Uniform Interrogatories and
8 Supplemental Request for Production without first seeking leave of court.
9

10
11 In the spirit of cooperation and in order to move this case forward on an expedited
12 basis, the Association has answered all of Plaintiff’s requests for production and non-
13 uniform interrogatories contained in both documents. Nevertheless, the Association
14 reserves the right to assert that Plaintiff has exceeded the limits of Rule 26.2(f)(2) as a
15 defense in the future if Plaintiff propounds additional requests for production and/or non-
16 uniform interrogatories or seeks to compel the Association to provide supplemental
17 documentation or responses.
18
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21 **FIRST SET OF NON-UNIFORM INTERROGATORIES AND**
22 **SUPPLEMENTAL REQUESTS FOR PRODUCTION**

23 **INTERROGATORY NO. 1 and SUPPLEMENTAL REQUEST FOR**
24 **PRODUCTION:** Discuss in detail the history of the Amendment from its inception
25 through to its recording including, but not limited to, discussing:

- 26 a. Who determined that the Amendment was necessary;
27 b. Why did these person(s) determine that the Amendment was necessary;
28 c. Who drafted the Amendment;

- 1 d. Which provisions of the CC&Rs were relied upon for purposes of
2 determining the votes needed to pass the Amendment and the reasons
3 why these provisions were relied upon;
- 4 e. When was each version of the Amendment drafted (please produce each
5 version of the Amendment and identify when it was drafted);
- 6 f. When was each version of the Amendment circulated throughout the
7 community (please produce all notices, mailers, announcements, meeting
8 agenda, explanations of the Amendment, etc. that were circulated along
9 with the version of the Amendment that went with it);
- 10 g. All HOA meetings (open, executive, special, etc.) where the Amendment
11 was discussed and specify what was discussed at each of these meetings
12 (please produce all notices, mailers, meeting agenda, meeting minutes
13 etc. that noticed such meetings or evidence that the Amendment was
14 discussed);
- 15 h. The HOA meeting where the ultimate Amendment was voted upon (i.e.,
16 when was the meeting, when was the notice of this meeting circulated
17 (produce the notice), how was the notice of this meeting circulated, what
18 materials were circulated with this notice (please produce all materials),
19 which Board members were in physical attendance at the meeting, which
20 Board Members appeared remotely, and explain why DMMA chose to
21 vote on the Amendment in this manner and produce the Minutes of this
22 Meeting.

23 **RESPONSE:** Objection. Initially, Plaintiff's nearly one-page long combination
24 non-uniform interrogatory/supplemental request for production is overly broad, vague,
25 unduly burdensome, and would require the Association to provide the equivalent of a
26 narrative detailing every chronological event underlying the Association's adoption of the
27 Amendment in question. Furthermore, Plaintiff's request for the Association to detail
28 "which provisions of the CC&Rs were relied upon for purposes of determining the votes
needed to pass the Amendment and the reasons why these provisions were relied upon"
calls for a legal conclusion and/or improperly requires the Association to disclose its legal
theories through a discovery response. It is obvious that Plaintiff and the Association

1 dispute which provisions of the CC&Rs were applicable to the Association's efforts to
2 adopt the Amendment in question. Nevertheless, Plaintiff's request is a purely legal issue
3 that should be resolved via dispositive motion.
4

5 Without waiving said objections, the issue of a potential short-term rental
6 restriction was brought up at the Council of Presidents Meeting held in April 2017. The
7 Association's community manager (now executive director), Kevin Pollock, was in
8 attendance at such meeting and subsequently informed the Association's Board of
9 Directors of the discussion. As a group, the Board Members determined that a short-term
10 rental restriction was necessary at some point between April 2017 and July 2017. While
11 each individual Board Member may differ slightly in their reasons, the primary reasons
12 the Board felt that the Amendment was necessary were ensuring security/safety,
13 maintaining property values, maintaining the quality of living and the Members'
14 enjoyment of their properties, protecting the Desert Mountain brand, and maintaining the
15 residential character of the community (i.e. not becoming a "resort").
16
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19 Undersigned counsel (Curtis Ekmark) drafted the Amendment. The Association
20 disclosed versions of the Amendment that were circulated to the membership (Bates #
21 DESERTMTN00001-00008) as **Exhibit "A"** to the Association's Responses to Plaintiff's
22 First Request for Production. Such versions were drafted and/or circulated to the
23 membership in July/August 2017 and February/March 2018, respectively.
24
25

26 Finally, the Association disclosed documentation with its Responses to Plaintiff's
27 First Request for Production that identify each Association Meeting at which the
28 Amendment was discussed, and explains how the May 1, 2018 Special Meeting was
noticed and the individuals who were in attendance at such meeting.

1 **INTERROGATORY NO. 2:** Please specify whether DMMA ever circulated a
2 statement throughout the community explaining the pros and cons of the Amendment;
3 and, if not, why it did not do so. If it did circulate such a statement, please produce same.

4
5 **RESPONSE:** The Association circulated several notices and bulletins explaining
6 why the Board Members believed the Amendment to be desirable for the community.
7 Copies of such notices and bulletins were included as part of the Association's Responses
8 to Plaintiff's First Request for Production. The Association did not circulate any notices
9 or bulletins urging the Membership to vote against the Amendment. A minority group of
10 homeowners (including Gary Moselle and others) frequently sent communications to the
11 Membership that contained their reasons for opposing the Amendment.
12
13

14 **INTERROGATORY NO. 3:** Please state who tallied the votes and discuss the
15 chain of custody from the point that the votes were tallied to who is currently in possession
16 of the ballots.

17
18 **RESPONSE:** Objection. Plaintiff's request that the Association "discuss the chain
19 of custody" is overly broad, vague, unduly burdensome, and would require the Association
20 to provide the equivalent of a narrative.
21

22 Without waiving said objections, the Association retained the accounting firm of
23 Butler Hansen, P.C. to tally the votes. Members mailed physical ballots to the
24 Association's office. The Association's community managers recorded the number of
25 physical ballots received each day from the date the ballots were first mailed to Members
26 through the date of the Special Meeting on May 1, 2018. The Association kept all physical
27 ballots sealed in their envelopes and delivered the same to Butler Hansen on a periodic
28 basis. The Association hired ElectionBuddy to oversee the online voting process. Upon

1 the expiration of the voting period, ElectionBuddy supplied Butler Hansen with an online
2 voting summary identifying all votes submitted electronically. Butler Hansen then tallied
3 all physical ballots and electronic votes and informed the Association of the result of the
4 vote.
5

6
7 RESPECTFULLY SUBMITTED this 1st day of February, 2019.

8 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**
9

10 By: /s/Gregory A. Stein
11 Curtis S. Ekmark, Esq.
12 Gregory A. Stein, Esq.
13 1400 E. Southern Ave., Suite 400
14 Tempe, AZ 85282
Attorneys for Defendant

15 COPY of the foregoing mailed and emailed
16 this 1st day of February 2019 to:

17 Jonathan A. Dessaulles, Esq.
18 Jacob A. Kubert, Esq.
19 Dessaulles Law Group
20 5353 North 16th Street, Suite 110
21 Phoenix, Arizona 85016
22 jdessaulles@dessaulleslaw.com
jkubert@dessaulleslaw.com
Attorneys for Plaintiff

23
24 By: /s/Annette Graham
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