

7 | Attorneys for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

11 | NICDON 10663, LLC, an Arizona limited
12 | liability company,

Case No. CV2018-015165

13 Plaintiff,

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16 **DESERT MOUNTAIN MASTER**
17 **ASSOCIATION, an Arizona nonprofit**
corporation,

**DEFENDANT'S RESPONSES
TO PLAINTIFF'S FIRST
REQUEST FOR PRODUCTION**

(Assigned to the
Honorable Colleen French)

18 | Defendant,

Defendant Desert Mountain Master Association, Inc. (the "Association"), by and
through undersigned counsel and pursuant to Ariz. R. Civ. P. 34, hereby submits its
responses to the First Request for Production propounded by Plaintiff Nicdon 10663, LLC
("Plaintiff" and/or "Nicdon"). The Association expressly reserves the right to supplement
its responses if and when additional discoverable documentation becomes available.

26 The Association generally objects to the number of requests for production that
27 Plaintiff propounded as part of its First Request for Production and First Set of Non-
28 Uniform Interrogatories and Supplemental Request for Production. This is a Tier 2 case

1 and, as such, each party is permitted no more than “10 Rule 34 requests for production”
2 without seeking leave of court. *See Ariz. R. Civ. P. 26.2(f)(2).* Discovery requests include
3 their distinct subparts. *See Ariz. R. Civ. P. 33(a)(2).* When including distinct subparts,
4 Plaintiff clearly propounded more than 10 Rule 34 requests for production through its First
5 Request for Production and First Set of Non-Uniform Interrogatories and Supplemental
6 Request for Production without first seeking leave of court.
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9 In the spirit of cooperation and in order to move this case forward on an expedited
10 basis, the Association has answered all of Plaintiff’s requests for production contained in
11 both documents. Nevertheless, the Association reserves the right to assert that Plaintiff
12 has exceeded the limits of Rule 26.2(f)(2) as a defense in the future if Plaintiff propounds
13 additional requests for production or seeks to compel the Association to disclose
14 supplemental documentation.
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16 **DOCUMENTS TO BE PRODUCED**
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18 **REQUEST FOR PRODUCTION NO. 1: All drafts of the Amendment.**

19 **RESPONSE:** The two versions of the Amendment circulated to the membership
20 (Bates # DESERTMTN00001-00008) are attached hereto as **Exhibit “A.”**
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22 **REQUEST FOR PRODUCTION NO. 2: All ballots tallied for and against the**
23 **Amendment.**

24 **RESPONSE:** Physical ballots tallied in support of and in opposition to the
25 Amendment (Bates # DESERTMTN00009-01151) are attached hereto as **Exhibit “B”;**
26 physical ballots not tallied in support of or in opposition to the Amendment¹ (Bates #
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¹ Ballots may not have been tallied for a number of reasons, i.e. an owner submitted two identical ballots (so one ballot was not counted), no selection was made on the ballot, the ballot was received after the due date, etc.

1 DESERTMTN01152-01192) are attached hereto as **Exhibit "C"**; an online voting
2 summary prepared by ElectionBuddy and identifying votes submitted electronically
3 (Bates # DESERTMTN01193-01218) is attached hereto as **Exhibit "D."**
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5 **REQUEST FOR PRODUCTION NO. 3:** The roster of homeowners in effect at
6 the time that the ballots were tallied which identifies those homeowners who were eligible
7 or not eligible to vote on the Amendment.

8 **RESPONSE:** A Homeowner Roster from mid-April 2018 (Bates #
9 DESERTMTN01219-01255) is attached hereto as **Exhibit "E."** The Homeowner Roster
10 identifies each Member to whom the Association issued a ballot and such Member's
11 unique "Election Key."

12 **REQUEST FOR PRODUCTION NO. 4:** All Minutes of Meetings (for both open
13 and executive meetings) where the Amendment was discussed.

14 **RESPONSE:** Minutes of Meetings (for both open and executive meetings) at
15 which the Amendment was discussed (Bates # DESERTMTN01256-01316) are attached
16 hereto as **Exhibit "F."**

17 **REQUEST FOR PRODUCTION NO. 5:** All documents that were sent to the
18 homeowners related in any way to the Amendment or voting thereon including, but not
19 limited to: Notices of Meetings; proposed amendments; explanations for each proposed
20 amendment; and, meeting agenda.

21 **RESPONSE:** Objection. Plaintiff's wholesale request is overly broad and unduly
22 burdensome. More specifically, the Association cannot be expected to assess what
23 Plaintiff subjectively intended through its use of the phrase "relating in any way to."
24 Without waiving said objections, various documents that were sent to the Members and

1 which the Association subjectively considers to be related to the Amendment (Bates #
2 DESERTMTN01317-01360) are attached hereto as **Exhibit "G."** Additionally,
3 documents disclosed by the Association in response to any of Plaintiff's foregoing
4 Requests for Production may also be responsive to this Request for Production No. 5.

6 **REQUEST FOR PRODUCTION NO. 6:** All video and/or audio recordings of
7 all HOA meetings, whether open or executive, where the Amendment was discussed.

9 **RESPONSE:** No such video or audio recordings exist.

10 **REQUEST FOR PRODUCTION NO. 7:** All correspondence (including emails,
11 text messages, letters, notes, voice mails, etc.) by and between Kevin Pollock and CCMC,
12 Rich Sherman and any other board members who sat on the Board from January 1, 2017
13 to the present regarding the Amendment, including, but not limited to: drafting the
14 Amendment, the voting process/procedure for the Amendment; the calling of any
15 meetings regarding the Amendment; discussions pertaining to what provisions of the
16 CC&Rs must be complied with to pass the Amendment.

19 **RESPONSE:** Objection. Plaintiff's wholesale request is overly broad and unduly
20 burdensome. More specifically, the Association cannot be expected to assess what
21 Plaintiff subjectively intended through its use of the phrase "regarding the Amendment."
22 Without waiving said objections, various correspondence and communications by and
23 between Kevin Pollock and CCMC, Rich Sherman, and other Association Board Members
24 that the Association subjectively considers to pertain to the Amendment (Bates #
25 DESERTMTN01361-01602) are attached hereto as **Exhibit "H."** Additionally,
26 documents disclosed by the Association in response to any of Plaintiff's foregoing
27 Requests for Production may also be responsive to this Request for Production No. 7.

REQUEST FOR PRODUCTION NO. 8: All documents and correspondence pertaining to the alleged “Special Meeting” occurring on or about May 1, 2018 including, but not limited to:

- a. Copies of all announcements/electronic newsletters sent to the community;
- b. Copies of any announcements placed on the bulletin boards adjacent to community mail stations;
- c. Copies of the meeting minutes associated with the May 1, 2018 Meeting;
- d. Indication of what Board Members were present, in person at the meeting;
- e. Indication of what Board Members were present, via remote connection, at the meeting;
- f. Indication of other attendees at the meeting.

RESPONSE: Objection. Plaintiff's wholesale request is overly broad and unduly burdensome. More specifically, the Association cannot be expected to assess what Plaintiff subjectively intended through its use of the phrase "pertaining to the alleged 'Special Meeting.'" Without waiving said objections, announcements/ notices of the Special Meeting and the Meeting Minutes for such meeting (Bates # DESERTMTN01603-01606) are attached hereto as **Exhibit "I."** The Meeting Minutes indicate which Board Members and other individuals were in attendance at the Special Meeting. Additionally, documents disclosed by the Association in response to any of Plaintiff's foregoing Requests for Production may also be responsive to this Request for Production No. 8.

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

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

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4 By: /s/Gregory A. Stein

5 Curtis S. Ekmark, Esq.

6 Gregory A. Stein, Esq.

7 1400 E. Southern Ave., Suite 400

8 Tempe, AZ 85282

9 *Attorneys for Defendant*

10 COPY of the foregoing mailed and emailed

11 this 1st day of February 2019 to:

12 Jonathan A. Dessaules, Esq.

13 Jacob A. Kubert, Esq.

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19 *Attorneys for Plaintiff*

20 By: /s/Annette Graham

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VERIFICATION

Kevin Pollock declares and states as follows:

I am the Executive Director of the Desert Mountain Master Association and an employee of CCMC Community Management. I have read the foregoing Responses to Plaintiff's First Request for Production. The contents thereof are true and accurate to the best of my knowledge.

I declare and verify under penalty of perjury that the foregoing is true and correct.



Kevin Pollock, Executive Director
Desert Mountain Master Association