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IN THE SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

NICDON 10663, LLC, an Arizona limited
liability company,

Plaintiff,

vs.

DESERT MOUNTAIN MASTER
ASSOCIATION, an Arizona nonprofit
corporation,

Defendant.

No. CV2018-015165

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S FIRST SET OF NON-
UNIFORM INTERROGATORIES**

Plaintiff, Nicdon 10663, LLC ("Plaintiff"), by and through undersigned counsel, hereby respond to Defendant's First Set of Non-Uniform Interrogatories. Plaintiff will supplement these responses as additional responsive documents are discovered in this litigation.

GENERAL OBJECTIONS AND RESERVATIONS

1. Plaintiff objects to all Non-Uniform Interrogatories which seek the production of information that is protected by the attorney-client privilege, attorney work product doctrine and/or any other privilege applicable. This information shall not be disclosed.

2. Plaintiff objects to all Non-Uniform Interrogatories to the extent that same requires or purports to require disclosure of information beyond the scope of discovery permissible under Rule 26(b) of the Arizona Rules of Civil Procedure. Plaintiff's responses shall neither waive nor prejudice

any objections that they may later assert, including, but not limited to, objections to the admissibility of any response to the Requests at trial.

3. Plaintiff objects to all Non-Uniform Interrogatories to the extent that the same requires or purports to require the disclosure of information that is confidential and proprietary to the Plaintiff.

4. In responding to each Non-Uniform Interrogatory, Plaintiff does not concede the relevancy of the subject matter to which the request refers. Plaintiff has answered the Requests without waiving or intending to waive any objections to competency, relevancy or admissibility as evidence of any matter or document referred to or made the subject of any answer provided at any proceeding, including the trial of this action.

5. Plaintiff reserves the right to amend, supplement or change their responses to the Non-Uniform Interrogatories with information learned from the course of further discovery.

6. The foregoing general objections and reservations are hereby incorporated into each of the answers set forth below.

RESPONSES TO NON-UNIFORM INTERROGATORIES

INTERROGATORY NO. 1:

Identify each and every instance You have leased or rented Your Property in the past and for each lease or rental provide: (a) the execution date of the applicable lease or rental agreement; (b) the beginning and ending dates; (c) the total monetary amount charged (including the daily or weekly monetary rate); (d) the number of people occupying the Property; and (e) contact information (name, mailing address, phone number, and email address) for each Person identified as occupying the Property.

RESPONSE:

Plaintiff objects to this Interrogatory because it violates Ariz. R. Civ. P. 26(b)(1). Specifically, the Interrogatory demands information that is irrelevant, it is disproportional to the needs of the HOA to defend the case, and because the burden to provide this information outweighs its likely benefit. This case is one of basic HOA governance and turns on the legal

1 questions of whether or not: i) DMMA violated the Open Meeting Law by failing to properly
2 notify the community of meetings pertaining to the HOA's Short-Term Rental Amendment (the
3 "STRA"); ii) DMMA violated the Open Meeting Law by failing to circulate proper agenda
4 pertaining to the STRA; iii) DMMA violated the express provisions of the amendment procedures
5 contained in its Governing Documents; iv) DMMA violated Arizona law and its governing
6 documents when it implemented the STRA; and v) whether the STRA is invalid under Arizona
7 law.

8 At this juncture, the parties have agreed to file competing motions for summary judgment
9 to resolve these legal issues. All potential appeals aside, if DMMA prevails on its MSJ, the STRA
10 will be enforceable and Plaintiff will be prevented from leasing the property to short term renters.
11 In this instance, DMMA has absolutely no use for past leases. If Plaintiffs prevails on its
12 forthcoming MSJ, the STRA will be invalid and unenforceable. Likewise, DMMA will have no
13 need for past leases because Plaintiff will be permitted to enter into short term leases with renters.
14 Therefore, discovery pertaining to Plaintiff's leases, the duration of leases, the amounts/revenues
15 that Plaintiff has derived from its leases and the names of Plaintiff's renters all have no bearing
16 on the outcome of the legal issues.

17 **INTERROGATORY NO. 2:**

18 Identify each and every commitment You have made to lease or rent Your Property in the
19 future and for each lease or rental provide (a) the execution date of the applicable lease or rental
20 agreement; (b) the beginning and ending dates; (c) the total monetary amount charged (including
21 the daily or weekly monetary rate); (d) the number of people occupying the Property; and (e)
22 contact information (name, mailing address, phone number, and email address) for each Person
23 identified as occupying the Property.

24 **RESPONSE:**

25 Plaintiff objects to this Interrogatory because it violates Ariz. R. Civ. P. 26(b)(1).
26 Specifically, the Interrogatory demands information that is irrelevant, it is disproportional to the

1 needs of the HOA to defend the case, and because the burden to provide this information
2 outweighs its likely benefit. This case is one of basic HOA governance and turns on the legal
3 questions of whether or not: i) DMMA violated the Open Meeting Law by failing to properly
4 notify the community of meetings pertaining to the HOA's Short-Term Rental Amendment (the
5 "STRA"); ii) DMMA violated the Open Meeting Law by failing to circulate proper agenda
6 pertaining to the STRA; iii) DMMA violated the express provisions of the amendment procedures
7 contained in its Governing Documents; iv) DMMA violated Arizona law and its governing
8 documents when it implemented the STRA; and v) whether the STRA is invalid under Arizona
9 law.

10 At this juncture, the parties have agreed to file competing motions for summary judgment
11 to resolve these legal issues. All potential appeals aside, if DMMA prevails on its MSJ, the STRA
12 will be enforceable and Plaintiff will be prevented from leasing the property to short term renters.
13 In this instance, DMMA has absolutely no use for these leases. If Plaintiffs prevails on its
14 forthcoming MSJ, the STRA will be invalid and unenforceable. Likewise, DMMA will have no
15 need for these leases because it will have no basis to object to them. Therefore, discovery
16 pertaining to Plaintiff's leases, the duration of leases, the amounts/revenues that Plaintiff has
17 derived from its leases and the names of Plaintiff's renters all have no bearing on the outcome of
18 the legal issues.

19 **INTERROGATORY NO. 3:**

20 Identify each and every fact You relied upon in formulating Paragraph 26 of Your
21 Complaint in which You state the following: "The Plaintiff relies on the revenue generated from
22 the Property and has already entered into several leases for 2019."

23 **RESPONSE:**

24 Plaintiff objects to this Interrogatory because it violates Ariz. R. Civ. P. 26(b)(1).
25 Specifically, the Interrogatory demands information that is irrelevant and is disproportional to the
26 needs of the HOA to defend the case. This case is one of basic HOA governance and turns on the

1 legal questions of whether or not: i) DMMA violated the Open Meeting Law by failing to properly
2 notify the community of meetings pertaining to the HOA's Short-Term Rental Amendment (the
3 "STRA"); ii) DMMA violated the Open Meeting Law by failing to circulate proper agenda
4 pertaining to the STRA; iii) DMMA violated the express provisions of the amendment procedures
5 contained in its Governing Documents; iv) DMMA violated Arizona law and its governing
6 documents when it implemented the STRA; and v) whether the STRA is invalid under Arizona
7 law.

8 At this juncture, the parties have agreed to file competing motions for summary judgment
9 to resolve these legal issues. Whether or not Plaintiff can afford to maintain the subject property
10 with or without revenue derived therefrom is completely irrelevant to resolving the legal issues
11 that will be put before the Court.

12 **INTERROGATORY NO. 4:**

13 Identify each and every Person You have communicated or corresponded with regarding
14 the Amendment and/or the Association's proposal to impose rental restrictions upon owners of
15 property located within the Association, as well as the substance of any such communication or
16 correspondence identified.

17 **RESPONSE:**

18 Plaintiff objects to this Interrogatory because it violates Ariz. R. Civ. P. 26(b)(1).
19 Specifically, the Interrogatory demands information that is disproportional to the needs of the
20 HOA to defend the case and because the burden to provide this information outweighs its likely
21 benefit. Furthermore, Plaintiff objects to this Interrogatory because it is overbroad, vague, unduly
22 burdensome and because the response is unlikely to lead to the disclosure of discoverable
23 information. This case is one of basic HOA governance and turns on the legal questions of whether
24 or not: i) DMMA violated the Open Meeting Law by failing to properly notify the community of
25 meetings pertaining to the HOA's Short-Term Rental Amendment (the "STRA"); ii) DMMA
26 violated the Open Meeting Law by failing to circulate proper agenda pertaining to the STRA; iii)

1 DMMA violated the express provisions of the amendment procedures contained in its Governing
2 Documents; iv) DMMA violated Arizona law and its governing documents when it implemented
3 the STRA; and v) whether the STRA is invalid under Arizona law. DMMA is aware that Plaintiff
4 and other homeowners have complained and objected to the STRA. There is no purpose to
5 disclosing

6 At this juncture, the parties have agreed to file competing motions for summary judgment
7 to resolve these legal issues. Discovery pertaining to who Plaintiff spoke with is not calculated to
8 resolve answers to the legal questions posed.

9 Notwithstanding and without waiver of the foregoing objections, Plaintiff directs DMMA
10 to the correspondence identified in Plaintiff's Rule 26.1 Initial Disclosure Statement.

11 DATED this 13th day of February 2019.

12 DESSAULES LAW GROUP

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14 By: 

15 Jonathan A. Dessaulles
16 Jacob A. Kubert
17 *Attorneys for Plaintiff*

18 ORIGINAL of the foregoing mailed and
19 COPY emailed this 13th day of February 2019.

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