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Attorneys for Plaintiff

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 REQUEST FOR
PRODUCTION OF DOCUMENTS AND
THINGS**

Plaintiff, Nicdon 10663, LLC ("Plaintiff"), by and through undersigned counsel, hereby responds to Defendant's First Request for Production. Plaintiff will supplement these responses as additional responsive documents are discovered in this litigation.

GENERAL OBJECTIONS AND RESERVATIONS

1. Plaintiff objects to all Requests 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 Requests 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

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

3 3. Plaintiff objects to all Requests to the extent that the same requires or purports to
4 require the disclosure of information that is confidential and proprietary to the Plaintiff.

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

10 5. Plaintiff reserves the right to amend, supplement or change their responses to the
11 Requests with information learned from the course of further discovery.

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

14 **RESPONSE TO REQUEST FOR PRODUCTION**

15 **Request No. 1:** Any and all lease or rental agreements for the leases or rentals identified in
16 Your response to the Association's Non-Uniform Interrogatories Nos. 1 and 2 submitted
17 contemporaneously herewith.

18 **RESPONSE:**

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

1 Documents; iv) DMMA violated Arizona law and its governing documents when it implemented
2 the STRA; and v) whether the STRA is invalid under Arizona law.

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

12
13 **Request No. 2:** Any and all documents or electronically-stored information which evidences
14 or supports Paragraph 26 of Your Complaint, in which You assert that You "rel[y up] on the
15 revenue generated from the Property."

16 **RESPONSE:**

17 Plaintiff objects to this Request because it violates Ariz. R. Civ. P. 26(b)(1). Specifically,
18 the Request demands information that is irrelevant and is disproportional to the needs of the HOA
19 to defend the case. This case is one of basic HOA governance and turns on the legal questions of
20 whether or not: i) DMMA violated the Open Meeting Law by failing to properly notify the
21 community of meetings pertaining to the HOA's Short-Term Rental Amendment (the "STRA");
22 ii) DMMA violated the Open Meeting Law by failing to circulate proper agenda pertaining to the
23 STRA; iii) DMMA violated the express provisions of the amendment procedures contained in its
24 Governing Documents; iv) DMMA violated Arizona law and its governing documents when it
25 implemented the STRA; and v) whether the STRA is invalid under Arizona law.

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

5
6 **Request No. 3:** Any and all documents or electronically-stored information containing
7 correspondence between You and any other Person regarding the Amendment and/or the
8 Association's proposal to impose rental restrictions upon owners of property located within the
9 Association.

10 **RESPONSE:**

11 Plaintiff objects to this Request because it violates Ariz. R. Civ. P. 26(b)(1). Specifically,
12 the Request demands information that is disproportional to the needs of the HOA to defend the
13 case and because the burden to provide this information outweighs its likely benefit. Furthermore,
14 Plaintiff objects to this Interrogatory because it is overbroad, vague, unduly burdensome, seeks
15 information protected by attorney-client privilege and because the response is unlikely to lead to
16 the disclosure of discoverable information. This case is one of basic HOA governance and turns
17 on the legal questions of whether or not: i) DMMA violated the Open Meeting Law by failing to
18 properly notify the community of meetings pertaining to the HOA's Short-Term Rental
19 Amendment (the "STRA"); ii) DMMA violated the Open Meeting Law by failing to circulate
20 proper agenda pertaining to the STRA; iii) DMMA violated the express provisions of the
21 amendment procedures contained in its Governing Documents; iv) DMMA violated Arizona law
22 and its governing documents when it implemented the STRA; and v) whether the STRA is invalid
23 under Arizona law. DMMA is aware that Plaintiff and other homeowners have complained and
24 objected to the STRA and is in possession of such communication.

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

4 Notwithstanding and without waiver of the foregoing objections, Plaintiff directs DMMA
5 to the emails and letters that are identified in Plaintiff's Rule 26.1 Initial Disclosure Statement.

6
7 **Request No. 4:** Any and documents or electronically-stored information evidencing Your
8 payment of taxes on all income received from the lease or rental of Your Property.

9 **RESPONSE:**

10 Plaintiff objects to this Request because it violates Ariz. R. Civ. P. 26(b)(1). Specifically,
11 the Request demands information that is irrelevant and is disproportional to the needs of the HOA
12 to defend the case. This case is one of basic HOA governance and turns on the legal questions of
13 whether or not: i) DMMA violated the Open Meeting Law by failing to properly notify the
14 community of meetings pertaining to the HOA's Short-Term Rental Amendment (the "STRA");
15 ii) DMMA violated the Open Meeting Law by failing to circulate proper agenda pertaining to the
16 STRA; iii) DMMA violated the express provisions of the amendment procedures contained in its
17 Governing Documents; iv) DMMA violated Arizona law and its governing documents when it
18 implemented the STRA; and v) whether the STRA is invalid under Arizona law.

19 At this juncture, the parties have agreed to file competing motions for summary judgment
20 to resolve these legal issues. Plaintiff's tax payments on the property and income generated
21 therefore is completely irrelevant to resolving the legal issues that will be put before the Court.

22 DATED this 13th day of February 2019.

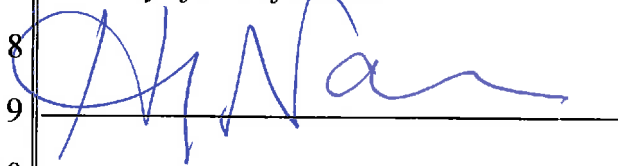
23 DESSAULES LAW GROUP

24 By: 

25 Jonathan A. Dessaulles
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Attorneys for Plaintiff

1 ORIGINAL of the foregoing mailed and
2 COPY emailed this 13th day of February 2019.

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