

November 11, 2021

**Via U.S. Mail and Electronic Mail**

Jackson D. Wicker  
Wicker Law Firm, PLLC  
4000 Westchase Blvd., Suite 120  
Raleigh, North Carolina 27607  
Email: [jackson.wicker@wickerlawfirm.com](mailto:jackson.wicker@wickerlawfirm.com)

Re: **Paul R. Brezinski et al v. Seven Lakes West Landowners Association, Inc.,  
(21-CVS-745); Defendant's Discovery Responses**

Dear Jackson:

This letter is in response to your motion to compel concerning the Association's responses to Plaintiffs' First Set of Discovery Requests and this letter shall also serve as a formal response to your discovery deficiency letter. However, as you know many of the items requested in that letter have already been addressed and/or produced.

**1. Verification of Interrogatory Responses**

We submitted our client's verification page to you by email on October 29, 2021. Therefore, the Motion to Compel based upon verification is no longer necessary.

**2. Plaintiffs' Motion to Compel Concerning Defendant's Interrogatory Responses and Objections to Interrogatories**

First, Plaintiffs' motion to compel was mainly based on Defendant's answers to these Interrogatories making a blanket referral to Defendant's entire document production without identifying the specific documents by name, category or bates ranges, the Defendant sent all documents originally produced to be re-produced in a more organized fashion with an index. Those reproduced documents and index were provided to Defense Counsel on November 09, 2021, and then provided to Plaintiffs' counsel on November 10, 2021. After receipt of this reproduction, Defendant was then able to prepare this letter and the Amended and/or Supplementation of its Responses to Plaintiffs First Set of Discovery Requests. As Plaintiffs' counsel is aware the original vendor provided an unorganized and incomplete set of documents. The vendor was unable to correct their mistakes and Defendant's attorney had to find another source. The second vendor was not able to correct the production of documents in the amount of time that Plaintiffs had given Defendants to respond to discovery and this contributed to multiple delays. At this time, we believe we have adequately responded to your discovery requests and have prepared amended and supplemental responses as stated in this letter.

I have tediously and painstakingly over the past 24 hours nitpicked each document in order to ensure I denote which specific interrogatories certain documents are responsive to and then list those

bate stamp numbers for you. I have also provided an index, which you received yesterday that categorizes the documents and makes them easier to locate and search.

(i) Interrogatory No. 1

Plaintiffs' Interrogatory Request No. 1 states *"Identify all persons or entities with knowledge or information concerning the claims or defenses to any claims at issue in this Lawsuit, and for each person or entity identified, provide a statement of the substance of the knowledge or information possessed. If you have a recorded statement (written or oral) of any person identified, describe such statement with particularity so that it can be requested for inspection or production."*

Plaintiff filed a motion to compel because Defendant provided a response and then also stated, "see attached documents." Therefore, we have amended and supplemented this response to remove the last part of the response that stated, "see attached documents". By previously stating "see attached documents" the intent was to simply make the generalized statement that the documents produced support the statement that these individuals have general knowledge based on their listed positions or service within the Association. However, upon further review of the Interrogatory, it appears to be more limited in scope to identity of individuals and statement of their knowledge and information. Therefore, we have amended to remove the "see attached documents" statement because it is not a necessary part of Defendant's response and further it would be unduly burdensome to identify each document that includes each one of these individuals and reference that document for each individual. As you know, the Defendant has produced documents that all generally evidence the nature of the identified individuals' knowledge or information.

You have also filed a motion to compel to dispute the objections raised in response to Interrogatory Number One. Defendant withdraws all objections except for the objection it raised concerning the mental impressions of counsel because this objection is in response to the request for "defenses to any claims at issue in the Lawsuit". The Association also maintains its objection concerning the overly broadness of Plaintiffs' request since Plaintiffs' request is for the identity of every person who may have knowledge or information concerning the claims or defenses to any claims at issue in this Lawsuit and a statement of the substance of the knowledge or information possessed. The Plaintiffs' have sued the Association which is governed by the current Board of Directors. However, the Plaintiffs' allegations span over the course of several years and concern potential information or knowledge that only prior Board members and/or Recruiting Committee members may possess and not the current Board of Directors and community manager. Therefore, it is also possible that there may be individuals or entities with potential discoverable information that are currently unknown to the current Board of Directors or community manager at this time. Notwithstanding these objections, no information was withheld in Defendant's response.

The Defendant is not required to contact any listed individuals who are nonparties to this action and get statements from them as to any further knowledge than what is provided in the documents produced, but you are certainly welcome to do so. Defendant has provided you with a list of individuals that it believes may have knowledge of the allegations asserted in the pleadings to the best of its knowledge. If you want to explore the substance of the knowledge or information possessed in more detail and specificity, then you may do so. The Association will amend this response if additional individuals with relevant information are determined during the discovery process.

However, the Association does not know of any additional individuals or entities to identify at this time.

(ii) Interrogatory No. 4

Plaintiffs' Interrogatory Request No. 4 states "*Identify all persons who assisted with, or was otherwise involved in, recruiting candidates to run for any of the three open board seats in the 2020 Board election.*"

Plaintiffs filed a motion to compel because Defendant identified individuals and then additionally stated, "see attached documents". Therefore, Defendant has amended and supplemented its response to Interrogatory Number 4 to identify the individuals that may have been involved in recruiting candidates. By previously stating "see attached documents" the intent was simply to make the generalized statement that the documents produced support the identification of these individuals as the Recruiting Committee or Board Members during those years. However, upon further review of the Interrogatory, it appears to be more limited in scope to identifying those individuals who assisted or were involved. Therefore, we have amended to remove the "see attached documents" statement because it is not a necessary part of Defendant's response and further it would be unduly burdensome to identify each document that includes each one of these individuals' names and reference that document for each individual we identified when it is not a necessary part of the interrogatory request and we have provided a complete response.

Plaintiffs' allegations span over the course of several years and concern potential information or knowledge that only prior property managers, Board members and/or Recruiting Committee members may possess and not the current Board of Directors and community manager. As you know from Interrogatory response number 2, the Defendant Association is governed by the Current Board of Directors, and they are the individuals who participated in responding to these questions along with the community manager. So, Defendant has identified the individuals from the prior Board of Directors and Recruiting Committee that it believes may have assisted or been involved identity of with recruiting candidates to run for the three open board seats in the 2020 election.

(iii) Interrogatory No. 5

Plaintiffs' Interrogatory Request No. 5 states, "*To the extent you contend any effort was made to recruit candidates to run for the seat of Bert van Domselaar during the time period of March 18, 2019, and November 22, 2019, provide the complete factual basis for such contention.*"

Plaintiff filed a motion to compel because Defendant gave a response and then additionally stated, "see attached documents". Therefore, Defendant has amended and supplemented its response to Interrogatory Number 5 to specifically reference each bate stamped document responsive to the Interrogatory pursuant to Rule 33(c) in addition to its response.

(iv) Interrogatory No. 6

Plaintiffs' Interrogatory Number 6 requests that "*For the time period of March 18, 2019 to December 31, 2019, identify all Members of the Association who expressed interest in running as a candidate to fill any of the three open board seats in the 2020 Board election, and for each Member*

*so identified: (1) state the name of the Member; (2) the date (mm/yyyy) the Member expressed interest in running as a candidate; (3) provide the name of all persons to whom the Member expressed interest in running as a candidate; (4) provide each date (mm/dd/yyyy) the Board, Recruiting Committee, or any person on their behalf communicated with the Member regarding the possibility of running as a candidate; and (5) state in detail the substance of each such communication with the Member.”*

Plaintiff filed a motion to compel over Defendant’s response to Interrogatory Number 6 based upon 33(c). Therefore, Defendant has amended and supplemented its response to Interrogatory Number 6 and also produces a document recently located, which it identifies in the amended and supplemental interrogatory response. That document is also enclosed with this letter as **Exhibit A**.

Plaintiff also asserts in their motion to compel to this interrogatory a request for Defendant to identify persons in possession of this information and a reasonable explanation as to why the Defendant is not in possession of such information. Again, the current Board of Directors are not in possession of all of the prior Board member and Recruiting Committee members knowledge and information, including their documents such as emails and text messages. During Mr. Domselaar’s tenure on the Board he used a seven lakes account and a personal gmail account. The Board has searched the seven lakes email account and located one responsive document from Mr. Domselaar that was supplemented/Exhibit A. However, it is not in possession of any other responsive documents. Defendant believes that Stan Makson and Bert van Domselaar would be in possession of the requested information.

(v.) Interrogatory No. 7

Plaintiffs’ Interrogatory Number 7 requests, *“To the extent you contend that the Board maintained reasonable oversight of the Recruiting Committee from March 19, 2019 to December 31, 2019, please provide the complete factual basis for such contention.”*

Plaintiffs filed a motion to compel because Defendant included in its response, “see attached documents”. Therefore, pursuant to 33(c) the Defendant has amended and supplemented its response and referenced each bate stamped document to be referenced with its response.

(vi) Interrogatory No. 8

Plaintiff’s Interrogatory Number 8 states, *“Identify all terms or provisions of the Association’s governing documents pursuant to which you contend the Board has the authority to fill a vacant director seat due to an increase in the number of governing directors.”*

Plaintiff filed a motion to compel because of Defendant’s objections. Notwithstanding those objections, no information was withheld in Defendant’s response. However, Defendant has prepared an amended and supplemental response to withdraw its prior objections to Interrogatory Number 8.

(vii). Interrogatory Number 11

Plaintiffs’ Interrogatory Number 11 provides, *“State in detail the Association’s process for determining whether a 2021 Board Election ballot should be mailed to a Lot Owner.”*

Plaintiffs did not identify in their deficient discovery letter any issues with Interrogatory Number 11 but did file a motion to compel concerning Interrogatory Number 11 based on Rule 33(c) because after Defendant gave a very lengthy answer it then stated, “see attached documents”. Therefore, in addition to the complete answer already provided, Defendant has amended and supplemented its response to identify bated stamped documents as well.

(viii). Interrogatory Number 12

It does not appear that Plaintiffs have filed a motion to compel based on Defendant’s response to Interrogatory 12. However, this is such a tedious and burdensome exercise that Defendant may have overlooked such argument by Plaintiffs. Therefore, to air on the side of caution, Defendant has amended and supplemented its response in order to identify the documents by bated stamp that it relied upon.

(iv). Interrogatory Number 13

It does not appear that Plaintiff has filed a motion to compel based on Defendant’s response to Interrogatory 13, but again this is such a tedious and burdensome exercise that Defendant may have overlooked such motion being raised as to this item. Therefore, to air on the side of caution, Defendant has amended and supplemented its response in order to identify the documents by bated stamp that it relied upon in response to Interrogatory number 13.

(x) Interrogatory No. 14

Plaintiffs’ Interrogatory Number 14 states, *“For any ballot produced in response to Request for Production No. 10 identify any ballot by Lot number that contains any alteration by Seven Lakes West or the Community Manager such as a mark, notation, stamp or other writing, and for each ballot so identified, provide the complete factual basis for said alteration.”*

Plaintiffs filed a motion to compel based upon Defendant’s objections to the interrogatory. Defendant withdraws its objections to this Request. Please see amended and supplemental response. Additionally, all ballots from the 2021 election have been produced, identified by bated stamp and none have been withheld. When Ms. Hodges reviewed the ballots, she started the review of each ballot by entering the lot number into the CAS licensed software, Caliber and reviewing the account status of such lot. If the lot owner was in good standing she put a check mark on the ballot to denote, “Good Standing”. If the lot owner was not in good standing she put an “X” on the ballot to denote, “Not in Good Standing”. She also marked a “D” on ballots if duplicate votes were received. If a ballot and/or envelope did not identify the lot number she indicated such on the ballot and/or envelope. Each ballot was also assigned a control number in the top righthand corner that corresponded to the number provided on the 2021 Election Audit spreadsheet.

Additionally, the Association originally produced copies of all the ballots for the 2021 annual meeting. On October 19, 2021, Plaintiff attorney sent an email with questions concerning the ballots produced that stated, “it appears that the proxy information has been covered up or otherwise obstructed on each of the developer/builder lots. The vast majority, if not all, of the ballots that can’t be reasonably contested as developer are unaltered. Unless there is a reason for this, please produce

a copy of the original ballots in full.” First, these questions are outside of the formal discovery request, but Defendant has responded by reproducing the only proxy that was received in the 2021 election. That proxy is enclosed herein as **Exhibit B**. Second, in regards to all ballots produced, everyone cast their own ballot except for one lot owner who returned their vote by proxy and not direct ballot. Hence, the next to last column on the 2021 audit spreadsheet we produced that is titled Proxy, which shows a tally of one proxy received. Third, in response to your recent questions concerning the ballots and proxy information, the instructions provided at the bottom of the ballot sent to each lot owner stated, “Cut along solid line above if no proxy is required. Complete below if you wish to assign a proxy.” As I am sure you are aware based on your in-depth review of the ballots produced, some lot owners followed instructions before submitting their ballots and cut along the solid line to remove the proxy portion from their ballot since they were casting their vote by direct ballot rather than by proxy. Other lot owners did not follow complete instructions when casting their vote by direct ballot and returned ballots without cutting the solid line above the proxy. Some owners cast their vote by direct ballot but cut off the form information below the solid line above the proxy as well as the form information above the solid line at the top of the ballot. Again, as I am sure you are already aware from your review of all the ballots produced, the information provided in the solid line at the top of the ballot form sent to each lot owner included the voting instructions. The ballot form sent to the lot owners was produced in discovery and can be referenced to see what each lot owner received in the mail from the Association and each ballot form was the same. The specific ballot that you questioned and sent by email on October 19, 2021, is an example of a ballot where the lot owner cut off the instructions on the ballot form that were provided above the top solid line and above the bottom solid line. Obviously, we can’t provide you with what voters cut off the ballot form and did not return. Additionally, some voters cast their vote by direct ballot but also filled out the proxy information below the bottom solid line without cutting it off the form. In those instances, the vote cast by direct ballot was the vote tallied and counted by the Association.

(xi) Interrogatory Number 16

Plaintiffs’ Interrogatory Number 16 states, “*State in detail the efforts undertaken by the Association to investigate the written complaint Don Smith served on the Community Manager on or around March 26, 2021 complaining about potential developer voting in the 2021 Board Election.*”

Plaintiffs filed a motion to compel because Defendant included in its response, “see attached documents”. Therefore, pursuant to 33(c) the Defendant has amended and supplemented its response and referenced each bate stamped document to be referenced with its response.

**3. Plaintiffs’ Motion to Compel Concerning Defendant’s Objections and Responses to Plaintiffs’ Requests for Production of Documents.**

(i) Request for Production No. 2

Plaintiff’s Request for Production Number 2 states, “*Produce a copy of all Documents which you intend to introduce at the trial of this matter.*”

Plaintiff filed a motion to compel because Defendant objected. Defendant withdraws its prior objections to this Request in its amended and supplemental response.

(ii) Request for Production No. 5

Plaintiffs' Request for Production Number 5 states, *"Produce a copy of all Documents (including e-mail and text messages) concerning any effort on the part of the Association, including but not limited to any efforts of the Recruiting Committee, to seek candidates to potentially run for the three (3) Board seats to be filled at the March 2020 Annual Meeting."*

Plaintiff filed a Motion to Compel because Defendant objected to this interrogatory under the attorney client privilege, work product doctrine, and anticipation of litigation. However, Defendant produced all responsive documents it had in its possession to this request. Yet, Defendant amends and supplements its response to withdraw those prior objections. But again, notwithstanding those prior objections, there are no documents in Defendant's possession concerning efforts of the Recruiting Committee to seek candidates to potentially run for the three Board seats to be filled at the March 2020 Annual Meeting that were withheld from production, including being withheld under any privilege. Defendant withdraws these objections

Plaintiff also filed a Motion to Compel because Defendant stated in its response "see attached documents." Therefore, Defendant has amended and supplemented this response to reference particular bates stamp documents. Additionally, what the Defendant means about not being in possession of all historical director and recruiting committee information is simply that the allegations span over a time period when other members served as directors and recruiting committee members and those members are no longer on the current Board. Therefore, Defendant is not in possession of information that those individuals may have in their possession.

(iii) Request for Production No. 6

Plaintiff's Request for Production Number 6 states, *"Produce a copy of all Documents (including email and text messages) concerning the Board's decision that the newly created 7<sup>th</sup> director seat should be Board-elected rather than Member-elected."*

Plaintiff filed a motion to compel because Defendant objected to the extent the request sought attorney-client privileged communications and attorney work product and communications in anticipation of litigation. Defendant withdraws these objections despite the fact that Defendant produced all responsive documents it had in its possession to this request, Defendant amends and supplements its response to withdraw those prior objections. But again, notwithstanding those prior objections, there are no documents concerning the Board's decision that the newly created 7<sup>th</sup> director seat should be Board-elected rather than Member-elected that were withheld from production, including being withheld under privilege.

Plaintiff also filed a motion to compel because Defendant stated in its response "see attached documents." Therefore, Defendant has amended and supplemented this response to reference particular bates stamp documents.

(iv) Request for Production No. 7

Plaintiffs' Request for Production Number 7 states, *"Produce a copy of all Documents (including e-mail and text messages) concerning the recruitment of Members to the newly created 7<sup>th</sup> director seat"*.

Plaintiff filed a motion to compel because Defendant objected to the extent the request sought attorney-client privileged communications and attorney work product and communications in anticipation of litigation. However, Defendant produced all responsive documents it had in its possession to this request. Yet, Defendant amends and supplements its response to withdraw those prior objections. But again, notwithstanding those prior objections, there are no documents in Defendant's possession concerning the recruitment of members to the newly created 7<sup>th</sup> director seat that were withheld from production, including being withheld under privilege.

Plaintiff also filed a motion to compel because Defendant stated in its response "see attached documents." Therefore, Defendant has amended and supplemented this response to reference particular bates stamp documents.

(v). Request for Production No. 8

Plaintiffs' Request for Production Number 8 states, *"Please produce a copy of all Documents (including e-mail and text messages) concerning the selection of Roberta Mannes to the newly created 7<sup>th</sup> director seat."*

Plaintiffs filed a motion to compel because Defendant objected to this request to the extent it sought attorney client privileged communications and attorney work product and/or communications in anticipation of litigation. Defendant withdraws these objections despite the fact that Defendant produced all responsive documents it had in its possession to this request, Defendant amends and supplements its response to withdraw those prior objections. But again, notwithstanding those prior objections, there are no documents concerning the selection of Roberta Mannes to the 7<sup>th</sup> director seat that should be withheld under such privilege. Defendant withdraws its objections to request for production number 8 and has prepared an amended and supplemental discovery response to do so.

(vi). Request for Production 9

Plaintiffs' Request for Production Number 9 states, *"Produce a copy of all of the Association's policies, procedures, manuals, guidelines or other literature concerning the Board of Director election process."*

Plaintiff filed a motion to compel because Defendant stated in its response "see attached documents." Therefore, Defendant has amended and supplemented this response to reference particular bates stamp documents and produces supplemental documents, which are enclosed herein as **Exhibit C**.

(vii). Request for Production 10

Plaintiffs' Request for Production Number 10 states, *"Produce a copy of all ballots cast in the 2021 Board Election."*



Plaintiff filed a motion to compel because Defendant stated in its response “see attached documents.” Therefore, Defendant has amended and supplemented this response to reference particular bates stamp documents.

(viii). Request for Production 12

Plaintiffs’ Request for Production Number 12 states, “*Produce a copy of all Documents generated to track, calculate, or otherwise maintain the vote count for the 2021 Board Election.*”

Plaintiff filed a motion to compel alleging that Defendant has failed to produce necessary and critical documents used during the election process, including any document that could establish or confirm a Lot Owner’s good standing and that Plaintiff has requested the production of any ledger showing payments made by Lot Owners for calendar year 2021 and that to date no such document has been produced. First, all the documents responsive to this request were produced informally after receipt of Plaintiffs’ discovery deficiency letter when it became apparent that Plaintiff attorney was not able to open documents of certain sizes sent with the original document production. Therefore, Defendant reproduced responsive documents to this Request informally, which are as follows: (1) on September 28, 2021, Plaintiffs’ attorney was sent by email the homeowner spreadsheet used to eliminate duplicate votes. Then on October 1, 2021 Defendant’s counsel sent to Plaintiffs attorney by email the following documents: (1) 2021 Duplicate Ballot Request Form; (2) Homeowner Report Spreadsheet used for Annual Mailing; (3) the duplicate ballots received; (4) the ballots returned after the election; (5) the ballots missing lot numbers; (6) the ballots returned unclaimed; (7) the ballots returned from those not in good standing; and (8) the 2021 Annual Meeting Ballot Audit. At this time, Plaintiff has reproduced those documents as of November 11, 2021 and supplemented their response to identify them by their new bates stamp number.

Plaintiffs’ attorney later sought by email outside of their formal requests for production, “all copies of the envelopes within which ballots were required to be sealed, or any log showing that the ballots were returned in an appropriately labeled envelope.” On November 02, 2021, the counsel for Defendant sent Plaintiff attorney an email that produced all such documents by share file link. The link contained bates stamped copies of the front and back of each envelope. Plaintiffs’ attorney has acknowledged receipt of said documents.

However, Plaintiffs’ attorney has still continued to request the production of other documents and now requests the “production of any ledger showing payments made by Lot Owners for calendar year 2021.” Plaintiffs have not asserted any allegations in their Complaint that Lot Owners who were not in good standing voted in the 2021 election. There is no basis under the allegations of the lawsuit brought against Defendant that are relevant to this request for documents establishing or confirming a Lot Owner’s good standing. The allegations of the Complaint regarding voting in the 2021 election concern the Plaintiffs’ information and belief that the Board allowed non-dues paying Developers to cast substantial number of ballots and potential swing elections in favor of their preferred candidates. *See* Complaint Paragraph 90(b), Page 15. The allegations brought under the subheading relating to the 2021 Election all relate to Developer voting.

Notwithstanding, the objections we raise in this letter to the additionally requested documents, the Association further responds that there is no calendar year 2021 ledger or spreadsheet in existence that shows the date 2021 payments were made by Lot Owners and in what amount for each Lot. The Association is not required to create documents that do not exist.

(ix) Request for Production 13

Plaintiffs' Request for Production Number 13 states, "*Produce a copy of all Documents (including e-mail and text messages) that you, or someone on your behalf, sent to, or received from the Community Manager concerning the 2021 Board Election.*"

Plaintiff filed a motion to compel Defendant objected to extent this requested attorney-client privileged communications and attorney work product and/or documents prepared in anticipation of litigation. Notwithstanding those objections, Defendant has produced all documents in its possession that are responsive to this request except for documents prepared in anticipation of litigation or documents that included the Board's attorneys. Therefore, Defendant produced a privilege log on showing which documents were redacted or not produced under what privilege. Defendant has raised many generalized affirmative defenses in its Answer to the Complaint. However, the reliance on the advice of counsel is not placed in issue until Defendant attempts to prove that defense by disclosing or describing an attorney-client communication. Defendant has no intent to rely on a blanket statement affirmative defense without offering evidence in support of such defense. Therefore, if Defendant decides to rely on this defense at trial, it will disclose or describe those attorney-client communications upon which it relies and timely supplement pursuant to Request for Production No. 2. Should Defendant intend to do so, the communications produced would be specifically those had with attorney Stephen Later prior to the filing of the lawsuit. Defendant is in no way using or relying on communications had with any attorneys after filing of the lawsuit as a potential affirmative defense. If Plaintiff attorney wants to discuss the privilege log in more detail to get more specifics on those documents without Defendant disclosing the privileges, Defendant's attorney is willing to have this conversation.

(x) Request for Production 14

Plaintiffs' Request for Production Number 14 states, "*Produce a copy of all Documents (including email and text messages) that you, or someone of your behalf, sent to, or received from a Member of the Association concerning the 2021 Board Election.*"

Defendant has supplemented this response to reference to particular bates stamped documents. Defendant withdraws its objection regarding attorney-client privilege, work product, and communications in anticipating of litigation as there are no documents Defendant sent or received from a Member of the Association (meaning those members outside of the Board) concerning the 2021 Board Election that were withheld from production, including being withheld under privilege.

(xi) Request for Production 16

Plaintiffs' Request for Production Number 16 states, *"Produce a copy of all Documents (including email and text messages) concerning any and all intra-director communications concerning the 2021 Board Election."*

Plaintiff filed a motion to compel because Defendant objected to extent this requested attorney-client privileged communications and attorney work product and/or documents prepared in anticipation of litigation. Notwithstanding those objections, Defendant has produced all documents in its possession that are responsive to this request except for documents prepared in anticipation of litigation or documents that included the Board's attorneys. Therefore, Defendant produced a privilege log showing which documents were redacted or not produced under what privilege. Plaintiff has raised many generalized affirmative defenses in its Answer to the Complaint. However, the reliance on the advice of counsel is not placed in issue until Defendant attempts to prove that defense by disclosing or describing an attorney-client communication. Defendant has no intent to rely on a blanket statement affirmative defense without offering evidence in support of such defense. Therefore, if Defendant decides to rely on this defense, it will disclose or describe those attorney-client communications upon which it relies and timely supplement pursuant to Request for Production No. 2. Should Defendant intend to do so, the communications produced would be specifically those had with Stephen Later prior to the filing of the lawsuit. Defendant is in no way using or relying on communications had with any attorneys including Mr. Later after filing of the lawsuit as a potential affirmative defense. If Plaintiff attorney wants to discuss the privilege log in more detail to get more specifics on those documents without Defendant disclosing the privileges, Defendant's attorney is willing to have this conversation.

**(4). Plaintiffs' Motion to Compel Concerning Defendant's Objections and Responses to Plaintiffs' Interrogatories 9 & 10 and Requests for Production of Document Number 17 & 18.**

**(i). Requests for Production No. 18.**

Plaintiffs' Request for Production Number 18 requests that Defendant *"Produce a copy of all Documents that you contend affords a Developer, or its successors and assigns, voting rights under the Association's governing documents."*

Plaintiff filed a motion to compel based upon Defendant's objections to this request. Defendant has amended and supplemented its responses and withdrawn its objections. However, Defendant's ability to clearly respond to this request may be hampered by the Plaintiffs failure to allege in their Complaint, which lot owners they believe to constitute the term "Developer" under the Association's governing documents. However, the Association has supplemented a response to the best of its abilities and in good faith. The Association has responded that the "Developer" and "prior Developer" under the governing documents do not have voting rights. Therefore, the Association does not contend that the "Developer" and "prior Developer" have voting rights. So technically, there are no documents to produce.

However, in good faith, the Defendants offer this further explanation. Plaintiffs state in the Motion to Compel that "the term Developer shall carry the same definition as set forth in the Association's Bylaws." The Bylaws are attached as an Exhibit to the Plaintiffs' Complaint and the

Defendant, Seven Lakes West Association, Inc. is the “Developer” as defined in the Bylaws. Specifically, Section 1.5 of the Bylaws defines “Developer” and states:

“Developer shall mean Seven Lakes West Landowners Association, Inc. (SLWLA) to the extent established as such in the written settlement agreement by and between the prior Developer including its predecessors and SLWLA (attached hereto and incorporated by reference herein) and any persons or entities succeeding to its respective rights and obligations under the Declaration. The prior Developer shall retain certain rights as determined in said settlement agreement but otherwise SLWLA shall not be governed in whole or in part by a third party Developer.”

Also, Section 6 of the Bylaws regarding Membership and Voting Rights states under Section 6.1 that

“Each Owner of a Lot or Lots shall be a Member of the Association and shall be entitled to vote at all Association meetings except as noted below. The prior Developer is not a Member of the Association and shall not be entitled to vote....”

The settlement agreement referenced in the Bylaws cited above has been produced in the supplemental responses and is enclosed herein as **Exhibit D**. This settlement agreement was between Defendant and Lakeside Development. Based upon the definition of “Developer”, the “prior Developer” is Lakeside as it is the entity in the settlement agreement. Lakeside conveyed and assigned to SLWLA any and all of its Developer Rights except those Retained Developer Rights. Therefore, the Association further supplements its response to state that the Association is the “Developer”. Moreover, the “prior Developer”, Lakeside Development Company did cast 22 votes. Upon audit of the election results, these votes were removed from the count and regardless did not change the outcome of those elected to the Board of Directors. The Association states that there are no documents that afford Lakeside or its predecessor Seven Lakes Development Company voting rights under the governing documents as shown by the enclosed settlement agreement and Bylaws. So, technically there are no documents responsive to this request.

Lakeside is the “prior Developer” and the Bylaws only prohibit the prior Developer from voting and its predecessor Seven Lakes Development Company. There are entities/individuals who own multiple lots and are builders. Those builders are not considered “Developer” or “prior Developer” under the Association’s governing documents and the settlement agreement and therefore have voting rights. There are builders such as Grande Pines and Blackpoint who own lots and do not pay dues as noted on the non-dues paying lot owner document. However, there is no provision that provides non-dues paying lot owners are automatically considered “Developer” and/or “prior Developer”. The Association is only in possession of documents that show Developer SLWLA and prior Developer Lakeside are not afforded voting rights under the Association’s governing documents. Those documents have been produced in the supplemental response to Request for Production 18 and are also enclosed herein as **Exhibit D**.

(ii) Interrogatories 9 and 10

Plaintiffs’ Interrogatory Number 9 states, “*For the time period, of January 1, 2021 to March 23, 2021, identify all Lots (by Lot number) then owned by a third party Developer, and for each Lot*

*so identified (1) provide the full legal name of the Developer; (2) state whether the Association collects dues or assessments on the Lot; (3) state whether any vehicle/entry device is registered by the Association to the Lot; (4) state whether any boat is registered to the Lot.”*

Plaintiffs filed a motion to compel because Defendant objected to the Interrogatory. Notwithstanding those objections, no information was withheld in Defendant’s response. However, Defendant has prepared an amended and supplemental response and withdraws its objection that the request is overbroad and unduly burdensome. We maintain that our remaining objections are reasonable. Defendant objected to this request on the grounds that the term “third party Developer” is vague and ambiguous and not subject to a precise meaning and is undefined by Plaintiffs. Plaintiffs responded in their deficient discovery letter dated September 17, 2021, that “Developer” is defined in the discovery requests and Complaint and offered no other clarity on this term for Defendant. However, “third party Developer” is not defined in the Complaint or discovery requests and although referenced in the Bylaws it is not defined and Plaintiffs have still failed to offer a definition of what they consider to constitute a “third party Developer” or allege which lot owners they believe to constitute the term “third-party Developer” under the Association’s governing documents. We also object on grounds this document is not likely to lead to the discovery of admissible evidence and is not relevant. That is because the document being produced in response to this request identifies non-dues paying Lots, which includes lots owned by builders and those builders do have voting rights as lot owners under the governing documents. Additionally, this request is not relevant because being a non-dues paying lot owner does not automatically make that lot owner a “Developer” or “prior Developer” under the governing documents. However, notwithstanding these objections, to Interrogatory number 9, Defendant has in good faith produced the only document it possesses that may be responsive to this request, which is entitled, “Non-Dues Paying Lots”. This document was originally produced by email via October 01, 2021. This document identifies the owners of Lots that do not pay dues and whether any vehicle or boat is registered to that Lot. There are no other documents responsive to this request in the possession of the Association. Despite the objections, the Association has not withheld any responsive information.

Plaintiffs’ Interrogatory Number 10 states, *“To the extent you contend any record owner identified in Interrogatory No. 9 has voting rights under the Association’s governing documents, provide the complete factual basis for such contention.”*

We again, stand by the objections made in Interrogatory Number 9 and here in Number 10 on the grounds that the term “third-party Developer” is vague and ambiguous and is not defined by Plaintiffs. However, Defendant withdraws its’ objection regarding legal conclusion, mental impressions of counsel and work product as there are no attorney client privilege documents or work product that provides the “Developer” and “prior Developer” or whatever “third party Developer” means - have voting rights under the governing documents. Notwithstanding the objections, Defendant has still identified the entities that constitute the “Developer” and “prior Developer” under the Association’s governing documents in response to Request for Production 18 and those entities do not have voting rights. However, the other entities on the non-dues paying lot owners document produced in response to Interrogatory number 9 are builders and those entities/persons do have voting rights under the Declaration and Bylaws of the Association.

(iii). Request for Production No. 17

Plaintiffs' Request for Production Number 17 states, *"For all Lots identified in Interrogatory Number 9 produce a copy of all Documents concerning (1) whether the Lot Owner is in good standing; (2) the dues and assessments levied on each Lot for the past five (5) years; (3) any vehicle/entry device registered by the Association to the Lot/Lot Owner; (4) any board registered to the Lot/Lot Owner."*

Defendant withdraws its objection that the request is overly broad and unduly burdensome. However, we believe our remaining objections are reasonable as explained above regarding interrogatory 9 & 10. Notwithstanding that objection, Defendant still produced the only document it possesses responsive to this request which is entitled "Non-Dues Paying Lots". There are no other documents responsive to this request in the possession of the Association.

In conclusion, Defendant has no other responsive documents, in its possession that have not already been produced. Please contact me upon review of this letter and the amended and supplemental discovery responses. We do not believe there is a basis for the motion to compel to go forward and that if you contend there is, it may be something that just requires clarification over a phone call instead of a 14-page letter.

Sincerely,

JORDAN PRICE WALL GRAY JONES & CARLTON

Mollie L. Cozart