Case 2:23-cv-02186-SHL-cgc

Document 87-5 Filed 01/25/24 Page 39 of 97 Pages Dul 387ch SN 88716061

**Disclaimer: "COMMUNITIES"** 

### **Goods and Services**

#### Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- · Brackets [..] indicate deleted goods/services;
- · Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- · Asterisks \* .. \* identify additional (new) wording in the goods/services.

For: Leasing of apartments; Leasing of real estate; Rental of apartments

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

First Use: Dec. 15, 2022

Use in Commerce: Dec. 15, 2022

#### **Basis Information (Case Level)**

Filed Use:		Currently Use:	No
Filed ITU:		Currently ITU:	Yes
Filed 44D:	No	Currently 44E:	No
Filed 44E:	No	Currently 66A:	No
Filed 66A:	No	Currently No Basis:	No
Filed No Basis:	No		

#### Current Owner(s) Information

Owner Name: Mid-America Apartment Communities, Inc.

Owner Address: 6584 Poplar Avenue Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: CORPORATION

State or Country Where TENNESSEE Organized:

#### Attorney/Correspondence Information

## https://tsdr.uspto.gov/#caseNumber=88716061&caseSearchType=US\_APPLICATION&caseType=SERIAL\_NO&searchType=statusSearch

Case 2:23-cv-02186-SHL-cgc	Document 87-5	Filed 01/25/24	Page 4
	D ID 4000		-

Pages Dul 388th SN 88716061

40 of 97

#### Attorney of Record

Attorney Name: Robert L. Brewer

Attorney Primary Email Trademarks@bassberry.com Address:

#### Correspondent

Correspondent Robert L. Brewer Name/Address: BASS, BERRY & SIMS PLC 150 THIRD AVENUE SOUTH **SUITE 2800** NASHVILLE, TENNESSEE UNITED STATES 37201

Phone: 615-742-7760

Correspondent e-mail: Trademarks@bassberry.com

**Domestic Representative - Not Found** 

## **Prosecution History**

Date	Description	Proceeding Number
Feb. 09, 2023	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Feb. 09, 2023	NON-FINAL ACTION E-MAILED	
Feb. 09, 2023	SU - NON-FINAL ACTION - WRITTEN	77782
Jan. 19, 2023	STATEMENT OF USE PROCESSING COMPLETE	66530
Dec. 16, 2022	USE AMENDMENT FILED	66530
Jan. 19, 2023	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
Dec. 16, 2022	TEAS STATEMENT OF USE RECEIVED	
Jun. 17, 2022	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 15, 2022	SOU EXTENSION 4 GRANTED	98765
Jun. 15, 2022	SOU EXTENSION 4 FILED	98765
Jun. 15, 2022	TEAS EXTENSION RECEIVED	
Dec. 07, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 03, 2021	SOU EXTENSION 3 GRANTED	98765

Docket Number: 107060.0149

#### Attorney Email Authorized: Yes

Fax: 615-742-6293

Correspondent e-mail Yes Authorized:

3/14/23, 4:39 PM

## Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 41 of 97

14/23, 4:39 PM	Page\$Du1 389h SN 88716061	
Dec. 03, 2021	SOU EXTENSION 3 FILED	98765
Dec. 03, 2021	TEAS EXTENSION RECEIVED	
Aug. 22, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Aug. 22, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Aug. 22, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Aug. 22, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Aug. 22, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 22, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jun. 18, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 16, 2021	SOU EXTENSION 2 GRANTED	98765
Jun. 16, 2021	SOU EXTENSION 2 FILED	98765
Jun. 16, 2021	TEAS EXTENSION RECEIVED	
Dec. 15, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 11, 2020	SOU EXTENSION 1 GRANTED	98765
Dec. 11, 2020	SOU EXTENSION 1 FILED	98765
Dec. 11, 2020	TEAS EXTENSION RECEIVED	
Jun. 16, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 21, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 21, 2020	PUBLISHED FOR OPPOSITION	
Apr. 01, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 18, 2020	ASSIGNED TO LIE	73296
Mar. 11, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 11, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Mar. 11, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Mar. 11, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Mar. 11, 2020	EXAMINERS AMENDMENT -WRITTEN	77782
Mar. 06, 2020	ASSIGNED TO EXAMINER	77782
Dec. 10, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	

## TM Staff and Location Information

#### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 42 of 97 Page 1390th SN 88716061

3/14/23, 4:39 PM

#### TM Staff Information

TM Attorney: YONTEF, DAVID ERIC

Law Office Assigned: LAW OFFICE 118

**File Location** 

Current Location: TMO LAW OFFICE 118- EXAMINING ATTORNEY ASSIGNED

Assignment Abstract Of Title Information - None recorded

**Proceedings - None recorded** 

Date in Location: Feb. 09, 2023

#### 3/14/23, 4:38 PM

For assistance with TSDR, email <u>teas@uspto.gov</u> and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

TSDR API DATA: The TSDR Application Programming Interface (API) has limited availability due to system upgrades. We anticipate full return to service for all API users by the end of the month. In the meantime, if you need to retrieve an office action, you can access it directly from the TSDR documents tab located below. We thank you for your patience while we make these improvements.

STATUS DOCUMENTS		Back to Search	Print
Generated on:	This page was generated by TSDR	on 2023-03-14 17:38:22 EDT	
Mark: M	AA A BRIGHTER VIEW		
		MAA A BR	IGHTER VIE
US Serial Number:	88716497	Application Filing Date: Dec. 05, 2019	
Filed as TEAS RF:	Yes	Currently TEAS RF: Yes	
Register:	Principal		
Mark Type:	Service Mark		
TM5 Common Status	0	LIVE/APPLICATION/Under Examination	
Descriptor:		The trademark application has been accepted by the Office (has met t requirements) and that this application has been assigned to an exam	and the second
Status:	A fifth request for extension of time	to file a Statement of Use has been granted.	
Status Date:	Jan. 06, 2023		
Publication Date:	Apr. 21, 2020	Notice of Allowance Date: Jun. 16, 2020	
Mark Information			
Mark Literal Elements:	MAAA BRIGHTER VIEW		
Standard Character Claim:	Yes. The mark consists of standard	characters without claim to any particular font style, size, or color.	
Mark Drawing Type:	4 - STANDARD CHARACTER MAR	RK	

## Case 2:23-cv-02186-SHL-cgc Doc

#### Document 87-5 Filed 01/25/24 Page Page D 1392 SN 88716497

Page 44 of 97

#### 3/14/23, 4:38 PM

## **Goods and Services**

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Class Status: ACTIVE

Basis: 1(b)

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Filed 44E: No	Currently 66A: No
Filed 66A: No	Currently No Basis: No

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Owner Name: Mid-America Apartment Communities, Inc.

Owner Address: 6584 Poplar Avenue Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: CORPORATION

State or Country Where TENNESSEE Organized:

### Attorney/Correspondence Information

Attorney of Record

Attorney Name: Robert L. Brewer

Docket Number: 107060.0149

## Case 2:23-cv-02186-SHL-cgc

#### Document 87-5 Filed 01/25/24 Page 45 of 97 Page Dh 1392h SN 88716497

Attorney Email Authorized: Yes

#### 3/14/23, 4:38 PM

Attorney Primary Email <u>Trademarks@bassberry.com</u> Address:

#### Correspondent

International per

Correspondent	Robert L. Brewer
Name/Address:	BASS, BERRY & SIMS PLC
	150 THIRD AVENUE SOUTH
	SUITE 2800
ALL DATING DESIGNATION AND DESIGNATION	NASHVILLE, TENNESSEE UNITED STATES 37201

Fax: 615-742-6293

Phone: 615-742-7760 Correspondent e-mail: <u>Trademarks@bassberry.com</u>

Correspondent e-mail Yes Authorized:

#### **Domestic Representative - Not Found**

### **Prosecution History**

Date	Description	Proceeding Number
Jan. 07, 2023	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jan. 06, 2023	SOU EXTENSION 5 GRANTED	66530
Dec. 16, 2022	SOU EXTENSION 5 FILED	66530
Jan. 06, 2023	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
Dec. 16, 2022	TEAS EXTENSION RECEIVED	
Jun. 17, 2022	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 15, 2022	SOU EXTENSION 4 GRANTED	98765
Jun. 15, 2022	SOU EXTENSION 4 FILED	98765
Jun. 15, 2022	TEAS EXTENSION RECEIVED	
Dec. 07, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 03, 2021	SOU EXTENSION 3 GRANTED	98765
Dec. 03, 2021	SOU EXTENSION 3 FILED	98765
Dec. 03, 2021	TEAS EXTENSION RECEIVED	
Aug. 22, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Aug. 22, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Aug. 22, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	

3/14/23, 4:38 PM	<b>J</b>	ocument 87-5 PagelD 1394	Filed 01/25/24	Page 46 of 97
Aug. 22, 2021	ATTORNEY/DOM.REP.REVOKED	Stands and reading		
Aug. 22, 2021	TEAS REVOKE/APP/CHANGE AD	DR OF ATTY/DOM F	REP RECEIVED	
Aug. 22, 2021	TEAS CHANGE OF OWNER ADD	RESS RECEIVED		
Jun. 18, 2021	NOTICE OF APPROVAL OF EXTE	NSION REQUEST E	-MAILED	
Jun. 16, 2021	SOU EXTENSION 2 GRANTED			98765
Jun. 16, 2021	SOU EXTENSION 2 FILED			98765
Jun. 16, 2021	TEAS EXTENSION RECEIVED			
Dec. 15, 2020	NOTICE OF APPROVAL OF EXTE	NSION REQUEST E	-MAILED	
Dec. 11, 2020	SOU EXTENSION 1 GRANTED			98765
Dec. 11, 2020	SOU EXTENSION 1 FILED			98765
Dec. 11, 2020	TEAS EXTENSION RECEIVED			
Jun. 16, 2020	NOA E-MAILED - SOU REQUIRED	FROM APPLICANT		
Apr. 21, 2020	OFFICIAL GAZETTE PUBLICATIO	ON CONFIRMATION	E-MAILED	
Apr. 21, 2020	PUBLISHED FOR OPPOSITION			
Apr. 01, 2020	NOTIFICATION OF NOTICE OF P	UBLICATION E-MAIL	ED	
Mar. 18, 2020	ASSIGNED TO LIE			66213
Mar. 11, 2020	APPROVED FOR PUB - PRINCIP	AL REGISTER		
Mar. 11, 2020	EXAMINER'S AMENDMENT ENT	ERED		88888
Mar. 11, 2020	NOTIFICATION OF EXAMINERS	AMENDMENT E-MAI	LED	6328
Mar. 11, 2020	EXAMINERS AMENDMENT E-MA	ILED		6328
Mar. 11, 2020	EXAMINERS AMENDMENT -WRI	TTEN		77782
Mar. 06, 2020	ASSIGNED TO EXAMINER			77782
Dec. 10, 2019	NEW APPLICATION OFFICE SUP	PLIED DATA ENTER	ED	

## TM Staff and Location Information

TM Staff Information

TM Attorney: YONTEF, DAVID ERIC

Law Office Assigned: LAW OFFICE 118

File Location

Current Location: INTENT TO USE SECTION

Date in Location: Jan. 06, 2023

3/14/23, 4:38 PM

## Assignment Abstract Of Title Information - None recorded

Proceedings - None recorded

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#### REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

#### WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years\* What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

#### Requirements in Successive Ten-Year Periods\* What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

#### **Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

\*ATTENTION MADRID PROTOCOL REGISTRANTS: The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

Page: 2 / RN # 4,009,475

Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 49 of 97 Case 2:23-cv-02186-SHL-cgc Document 10-1 Filed 06/13/23 Page 26 of 45 PageID 221

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office Reg. No. 3,268,349 Registered July 24, 2007

#### SERVICE MARK PRINCIPAL REGISTER

## Mid-America Apartment Communities

MID AMERICA APARTMENT COMMUNITIES, INC. (TENNESSEE CORPORATION) 6584 POPLAR AVENUE MEMPHIS, TN 38138

FOR: LEASING OF APARTMENTS; LEASING OF REAL ESTATE; RENTAL OF APARTMENTS, IN CLASS 36 (U.S. CLS, 100, 101 AND 102).

FIRST USE 9-0-1994; IN COMMERCE 9-0-1994.

THE MARK CONSISTS OF STANDARD CHAR-ACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR. NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "APARTMENT COMMUNITIES", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

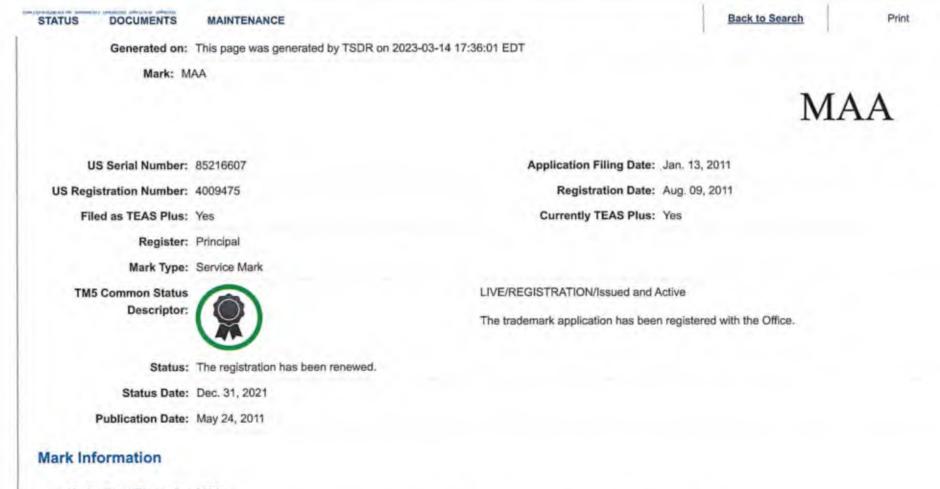
SER. NO. 78-971,584, FILED 9-11-2006.

LINDA MICKLEBURGH, EXAMINING ATTORNEY

#### 3/14/23, 4:36 PM

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

TSDR API DATA: The TSDR Application Programming Interface (API) has limited availability due to system upgrades. We anticipate full return to service for all API users by the end of the month. In the meantime, if you need to retrieve an office action, you can access it directly from the TSDR documents tab located below. We thank you for your patience while we make these improvements.



Mark Literal Elements: MAA

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

#### Document 87-5 Filed 01/25/24 Page 51 of 97 Page 1399th SN 85216607

3/14/23, 4:36 PM

## **Goods and Services**

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- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Leasing of apartments

International Class(es): 036 - Primary Class

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 11, 2011

Use in Commerce: Mar. 11, 2011

U.S Class(es): 100, 101, 102

#### **Basis Information (Case Level)**

Filed Use:	No	Currently Use:	Yes
Filed ITU:	Yes	Currently ITU:	No
Filed 44D:	No	Currently 44E:	No
Filed 44E:	No	Currently 66A:	No
Filed 66A:	No	Currently No Basis:	No

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Owner Name: Mid America Apartment Communities, Inc.

Owner Address: 6584 Poplar Avenue Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: CORPORATION

State or Country Where TENNESSEE Organized:

#### Attorney/Correspondence Information

#### Attorney of Record

#### Case 2:23-cv-02186-SHL-cgc Do

## PagesDn1400th SN 85216607

Docket Number: 107060.0149

Attorney Email Authorized: Yes

A NOR SHE

Attorney Name: Robert L. Brewer

Attorney Primary Email trademarks@bassberry.com Address:

Correspondent

Correspondent Robert L. Brewer Name/Address: Bass, Berry & Sims PLC 150 3rd Avenue South Suite 2800 Nashville, TENNESSEE UNITED STATES 37201

Phone: 615-742-7760

Fax: 615-742-6293

Correspondent e-mail: trademarks@bassberry.com

Correspondent e-mail Yes Authorized:

**Domestic Representative - Not Found** 

## **Prosecution History**

Date	Description	Proceeding Number
Dec. 31, 2021	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Dec. 31, 2021	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	74886
Dec. 31, 2021	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	74886
Dec. 31, 2021	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	74886
Aug. 22, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Aug. 22, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Aug. 22, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Aug. 22, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Aug. 22, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 22, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jul. 21, 2021	TEAS SECTION 8 & 9 RECEIVED	
Aug. 09, 2020	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Dec. 13, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 13, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	

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## Document 87-5 Filed 01/25/24 Page 52 of 97

3/14/23, 4:36 PM

14/23, 4:36 PM	Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 PagetDh1401ch SN 85216607	Page 53 of 97
Sep. 13, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Sep. 13, 2017	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	67110
Sep. 13, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67110
Aug. 08, 2017	TEAS SECTION 8 & 15 RECEIVED	
Aug. 09, 2016	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
May 02, 2014	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
May 02, 2014	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 09, 2011	REGISTERED-PRINCIPAL REGISTER	
May 24, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 24, 2011	PUBLISHED FOR OPPOSITION	
Apr. 20, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	70138
Apr. 20, 2011	ASSIGNED TO LIE	70138
Apr. 06, 2011	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	
Apr. 05, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 05, 2011	USE AMENDMENT ACCEPTED	74662
Apr. 05, 2011	ASSIGNED TO EXAMINER	74662
Mar. 17, 2011	AMENDMENT TO USE PROCESSING COMPLETE	88889
Mar. 17, 2011	USE AMENDMENT FILED	88889
Mar. 16, 2011	TEAS AMENDMENT OF USE RECEIVED	
Jan. 19, 2011	NOTICE OF PSEUDO MARK MAILED	
Jan. 18, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	
Jan. 17, 2011	NEW APPLICATION ENTERED	

## TM Staff and Location Information

TM Staff Information - None

**File Location** 

Current Location: GENERIC WEB UPDATE

Date in Location: Dec. 31, 2021

## Assignment Abstract Of Title Information - None recorded

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Proceedings - None recorded

period of the present of the property of the p

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STATUS DOCUMENTS MAINT	STATUS	DOCUMENTS	MAINT
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S MAINTENANCE

Generated on: This page was generated by TSDR on 2023-03-14 17:37:08 EDT

Mark: MID-AMERICA APARTMENT COMMUNITIES

## Mid-America Apartment Communities

Print

**Back to Search** 

US Serial Number: 78971584

US Registration Number: 3268349

Filed as TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:

(🎗)

Application Filing Date: Sep. 11, 2006 Registration Date: Jul. 24, 2007

Currently TEAS Plus: Yes

LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Sep. 01, 2017

Publication Date: May 08, 2007

#### Mark Information

Mark Literal Elements: MID-AMERICA APARTMENT COMMUNITIES

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Case 2:23-cv-02186-SHL-cgc

#### Document 87-5 Filed 01/25/24 Page 56 of 97 Page 10-1404h SN 78971584

Disclaimer: "Apartment Communities"

Acquired Distinctiveness In whole Claim:

#### **Goods and Services**

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Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: CORPORATION

State or Country Where TENNESSEE Organized:

## Case 2:23-cv-02186-SHL-cgc

#### Document 87-5 Filed 01/25/24 Page 57 of 97 Page\$201 405 h SN 78971584

#### Attorney/Correspondence Information

#### Attorney of Record

Attorney Name: Robert L. Brewer

Attorney Primary Email trademarks@bassberry.com Address:

#### Correspondent

Correspondent Robert L. Brewer Name/Address: Bass, Berry & Sims PLC 150 3rd Avenue South Suite 2800 Nashville, TENNESSEE UNITED STATES 37201

Phone: 615-742-7760

Correspondent e-mail: trademarks@bassberry.com

**Domestic Representative - Not Found** 

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Aug. 22, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Aug. 22, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Aug. 22, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 22, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Dec. 13, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 13, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Sep. 01, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Sep. 01, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	69615
Sep. 01, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	69615
Sep. 01, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	69615

https://tsdr.uspto.gov/#caseNumber=78971584&caseSearchType=US\_APPLICATION&caseType=SERIAL\_NO&searchType=statusSearch

Docket Number: 107060.0149

#### Attorney Email Authorized: Yes

Fax: 615-742-6293

Correspondent e-mail Yes Authorized:

/14/23, 4:37 PM	Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 5 Page 101/14406th SN 78971584	8 of 97
Jul. 24, 2017	TEAS SECTION 8 & 9 RECEIVED	
Jul. 24, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
May 02, 2014	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
May 02, 2014	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Aug. 28, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Aug. 28, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. 683	35
Aug. 27, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL 683	35
Aug. 08, 2012	TEAS SECTION 8 & 15 RECEIVED	
Jul. 24, 2007	REGISTERED-PRINCIPAL REGISTER	
May 08, 2007	PUBLISHED FOR OPPOSITION	
Apr. 18, 2007	NOTICE OF PUBLICATION	
Mar. 09, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED 592	72
Mar. 09, 2007	ASSIGNED TO LIE 592	72
Feb. 09, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 07, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED 8888	89
Feb. 07, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE 8888	89
Feb. 07, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 06, 2007	NON-FINAL ACTION E-MAILED 632	5
Feb. 06, 2007	NON-FINAL ACTION WRITTEN 742	88
Feb. 01, 2007	ASSIGNED TO EXAMINER 742	88
Sep. 15, 2006	NEW APPLICATION ENTERED	

## TM Staff and Location Information

#### TM Staff Information - None

#### **File Location**

Current Location: GENERIC WEB UPDATE

Date in Location: Sep. 01, 2017

## Assignment Abstract Of Title Information - None recorded

## Proceedings - None recorded

3/14/2	23, 4:	39	PM
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For assistance with TSDR, email <u>teas@uspto.gov</u> and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

TSDR API DATA: The TSDR Application Programming Interface (API) has limited availability due to system upgrades. We anticipate full return to service for all API users by the end of the month. In the meantime, if you need to retrieve an office action, you can access it directly from the TSDR documents tab located below. We thank you for your patience while we make these improvements.

STATUS DOCUMENTS			Back to Search	Print
Generated on:	This page was generated by TSDR o	n 2023-03-14 17:38:58 EDT		
Mark: M	IAA COMMUNITIES			
			MAA COM	MUNITIE
US Serial Number:	88716061	Application Filing Date: Dec. 05	, 2019	
Filed as TEAS RF:	Yes	Currently TEAS RF: Yes		
Register:	Principal			
Mark Type:	Service Mark			
TM5 Common Status	0	LIVE/APPLICATION/Under Examination		
Descriptor:		The trademark application has been accepte requirements) and that this application has b		
Status:		ent (issued) to the applicant after review of the Statement of Use or making an initial refusal. The applicant must respond. To view at the top of this page.		
Status Date:	Feb. 09, 2023			
Publication Date:	Apr. 21, 2020	Notice of Allowance Date: Jun. 16,	2020	
Mark Information				
Mark Literal Elements:	MAA COMMUNITIES			
Standard Character Claim:	Yes. The mark consists of standard of	characters without claim to any particular font style, size, or color	r.	
Mark Drawing Type:	4 - STANDARD CHARACTER MARK	< c		

Case 2:23-cv-02186-SHL-cgc

Document 87-5 Filed 01/25/24 Page 60 of 97 Page 104408th SN 88716061

**Disclaimer: "COMMUNITIES"** 

## **Goods and Services**

#### Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- · Brackets [..] indicate deleted goods/services;
- · Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- · Asterisks "..." identify additional (new) wording in the goods/services.

For: Leasing of apartments; Leasing of real estate; Rental of apartments

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Use in Commerce: Dec. 15, 2022

**Class Status: ACTIVE** 

Basis: 1(b)

First Use: Dec. 15, 2022

**Basis Information (Case Level)** 

Filed Use:	No	Currently Use:	No
Filed ITU:	Yes	Currently ITU:	Yes
Filed 44D:	No	Currently 44E:	No
Filed 44E:	No	Currently 66A:	No
Filed 66A:	No	Currently No Basis:	No
Filed No Basis:	No		

#### Current Owner(s) Information

Owner Name: Mid-America Apartment Communities, Inc.

Owner Address: 6584 Poplar Avenue Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: CORPORATION

State or Country Where TENNESSEE Organized:

#### Attorney/Correspondence Information

/14/23, 4:39 PM	Case 2:23-cv-02186-SHL-cgc	Document 87-5 Filed 01/25/24 Page10112409th SN 88716061	Page 61 of 97
Attorney of Record			
Attorney Name:	Robert L. Brewer	Docket Number:	107060.0149
Attorney Primary Email Address:	Trademarks@bassberry.com	Attorney Email Authorized:	Yes
Correspondent			
	Robert L. Brewer BASS, BERRY & SIMS PLC 150 THIRD AVENUE SOUTH SUITE 2800 NASHVILLE, TENNESSEE UNITED STATE	ES 37201	
Phone:	615-742-7760	Fax:	615-742-6293
Correspondent e-mail:	Trademarks@bassberry.com	Correspondent e-mail Authorized:	Yes
Domestic Representative - Not	Found		

## **Prosecution History**

Date	Description	Proceeding Number
Feb. 09, 2023	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Feb. 09, 2023	NON-FINAL ACTION E-MAILED	
Feb. 09, 2023	SU - NON-FINAL ACTION - WRITTEN	77782
Jan. 19, 2023	STATEMENT OF USE PROCESSING COMPLETE	66530
Dec. 16, 2022	USE AMENDMENT FILED	66530
Jan. 19, 2023	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
Dec. 16, 2022	TEAS STATEMENT OF USE RECEIVED	
Jun. 17, 2022	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 15, 2022	SOU EXTENSION 4 GRANTED	98765
Jun. 15, 2022	SOU EXTENSION 4 FILED	98765
Jun. 15, 2022	TEAS EXTENSION RECEIVED	
Dec. 07, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 03, 2021	SOU EXTENSION 3 GRANTED	98765

14/23, 4:39 PM	Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 62 of 97 Page 10 1 1 1 1 1 2 1 2 1 2 2 2 2 2 2 2 2 2
Dec. 03, 2021	SOU EXTENSION 3 FILED 98765
Dec. 03, 2021	TEAS EXTENSION RECEIVED
Aug. 22, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED 888888
Aug. 22, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED
Aug. 22, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS
Aug. 22, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED
Aug. 22, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED
Aug. 22, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED
Jun. 18, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED
Jun, 16, 2021	SOU EXTENSION 2 GRANTED 98765
Jun. 16, 2021	SOU EXTENSION 2 FILED 98765
Jun. 16, 2021	TEAS EXTENSION RECEIVED
Dec. 15, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED
Dec. 11, 2020	SOU EXTENSION 1 GRANTED 98765
Dec. 11, 2020	SOU EXTENSION 1 FILED 98765
Dec. 11, 2020	TEAS EXTENSION RECEIVED
Jun. 16, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT
Apr. 21, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED
Apr. 21, 2020	PUBLISHED FOR OPPOSITION
Apr. 01, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED
Mar. 18, 2020	ASSIGNED TO LIE 73296
Mar. 11, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER
Mar. 11, 2020	EXAMINER'S AMENDMENT ENTERED 88888
Mar. 11, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED 6328
Mar. 11, 2020	EXAMINERS AMENDMENT E-MAILED 6328
Mar. 11, 2020	EXAMINERS AMENDMENT - WRITTEN 77782
Mar. 06, 2020	ASSIGNED TO EXAMINER 77782
Dec. 10, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED

## TM Staff and Location Information

#### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 63 of 97 Page 10-4441th SN 88716061

3/14/23, 4:39 PM

#### TM Staff Information

TM Attorney: YONTEF, DAVID ERIC

Law Office Assigned: LAW OFFICE 118

#### **File Location**

Current Location: TMO LAW OFFICE 118- EXAMINING ATTORNEY ASSIGNED Date in Location: Feb. 09, 2023

... Assignment Abstract Of Title Information - None recorded

Proceedings - None recorded

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For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

TSDR API DATA: The TSDR Application Programming Interface (API) has limited availability due to system upgrades. We anticipate full return to service for all API users by the end of the month. In the meantime, if you need to retrieve an office action, you can access it directly from the TSDR documents tab located below. We thank you for your patience while we make these improvements.

STATUS DOCUMENTS			Back to Search	Print
Generated on:	This page was generated by TSDR on	2023-03-14 17:38:22 EDT		
Mark: M	AA A BRIGHTER VIEW			
			MAA A BRI	GHTER VIEW
US Serial Number:	88716497	Application Filing Date: Dec. 05,	2019	
Filed as TEAS RF:	Yes	Currently TEAS RF: Yes		
Register:	Principal			
Mark Type:	Service Mark			
TM5 Common Status	0	LIVE/APPLICATION/Under Examination		
Descriptor:		The trademark application has been accepted requirements) and that this application has be		
Status:	A fifth request for extension of time to	file a Statement of Use has been granted.		
Status Date:	Jan. 06, 2023			
Publication Date:	Apr. 21, 2020	Notice of Allowance Date: Jun. 16, 2	2020	
Mark Information				
Mark Literal Elements:	MAA A BRIGHTER VIEW			
Standard Character Claim:	Yes. The mark consists of standard ch	aracters without claim to any particular font style, size, or color.		
Mark Drawing Type:	4 - STANDARD CHARACTER MARK			

#### Document 87-5 Filed 01/25/24 Page 65 of 97 Page Dul 443h SN 88716497

3/14/23, 4:38 PM

## **Goods and Services**

#### Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- · Brackets [..] indicate deleted goods/services;
- · Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- · Asterisks \* .. \* identify additional (new) wording in the goods/services.

For: Leasing of apartments; Leasing of real estate; Rental of apartments

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

### **Basis Information (Case Level)**

Filed Use:	No	Currently Use:	No
Filed ITU:	Yes	Currently ITU:	Yes
Filed 44D:	No	Currently 44E:	No
Filed 44E:	No	Currently 66A:	No
Filed 66A:	No	Currently No Basis:	No
Filed No Basis:	No		

## Current Owner(s) Information

Owner Name: Mid-America Apartment Communities, Inc.

Owner Address: 6584 Poplar Avenue Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: CORPORATION

State or Country Where TENNESSEE Organized:

## Attorney/Correspondence Information

Attorney of Record

Attorney Name: Robert L. Brewer

Docket Number: 107060.0149

Attorney Primary Email Address:	Trademarks@bassberry.com	Attorney Email Authorized: )	es
Correspondent			
Correspondent	Robert L. Brewer BASS, BERRY & SIMS PLC 150 THIRD AVENUE SOUTH SUITE 2800 NASHVILLE, TENNESSEE UNITED STATES 33	7201	
Phone:	615-742-7760		15-742-6293
Correspondent e-mail:	Trademarks@bassberry.com	Correspondent e-mail A Authorized:	/es
Domestic Representative - Not	Found		
Prosecution History			
Date	Description		Proceeding Numbe
an. 07, 2023	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED		
an. 06, 2023	SOU EXTENSION 5 GRANTED		66530
Dec. 16, 2022	SOU EXTENSION 5 FILED		66530
Jan. 06, 2023	CASE ASSIGNED TO INTENT TO	USE PARALEGAL	66530
Dec. 16, 2022	TEAS EXTENSION RECEIVED		
lun. 17, 2022	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED		
Jun. 15, 2022	SOU EXTENSION 4 GRANTED		98765
Jun. 15, 2022	SOU EXTENSION 4 FILED		98765
Jun. 15, 2022	TEAS EXTENSION RECEIVED		
Dec. 07, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED		
c. 03, 2021 SOU EXTENSION 3 GRANTED		98765	
Dec. 03, 2021	SOU EXTENSION 3 FILED		98765
Dec. 03, 2021	TEAS EXTENSION RECEIVED		
Aug. 22, 2021	APPLICANT/CORRESPONDENC	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED 888888	
Aug. 22, 2021	TEAS CHANGE OF CORRESPON	NDENCE RECEIVED	
Aug. 22, 2021	TEAS WITHDRAWAL OF ATTOR	NEY RECEIVED-FIRM RETAINS	

Document 87-5 Filed 01/25/24 Page 66 of 97 Page Du 414 SN 88716497

#### 3/14/23, 4:38 PM

## Attorney Primary Email Trademarks@bassberry.com

Case 2:23-cv-02186-SHL-cgc

14/23, 4:38 PM	Case 2:23-cv-02186-SHL-cgc	Document 87-5 Filed 01/25/24 Page Du1415h SN 88716497	Page 67 of 97	
Aug. 22, 2021	ATTORNEY/DOM.REP.REVO	KED AND/OR APPOINTED		
Aug. 22, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED			
Aug. 22, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED			
Jun. 18, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED			
Jun. 16, 2021	SOU EXTENSION 2 GRANTED		98765	
Jun. 16, 2021	SOU EXTENSION 2 FILED		98765	
Jun. 16, 2021	TEAS EXTENSION RECEIVED			
Dec. 15, 2020	NOTICE OF APPROVAL OF E	XTENSION REQUEST E-MAILED		
Dec. 11, 2020	SOU EXTENSION 1 GRANTED		98765	
Dec. 11, 2020	SOU EXTENSION 1 FILED		98765	
Dec. 11, 2020	TEAS EXTENSION RECEIVED			
Jun. 16, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT			
Apr. 21, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED			
Apr. 21, 2020	PUBLISHED FOR OPPOSITION			
Apr. 01, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED			
Mar. 18, 2020	ASSIGNED TO LIE 66213		66213	
Mar. 11, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER			
Mar. 11, 2020	EXAMINER'S AMENDMENT	88888		
Mar. 11, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED 6328			
Mar. 11, 2020	EXAMINERS AMENDMENT E-MAILED 6328			
Mar. 11, 2020	EXAMINERS AMENDMENT - WRITTEN 77782			
Mar. 06, 2020	ASSIGNED TO EXAMINER 77782			
Dec. 10, 2019	NEW APPLICATION OFFICE	SUPPLIED DATA ENTERED		

## TM Staff and Location Information

**TM Staff Information** 

TM Attorney: YONTEF, DAVID ERIC

Law Office Assigned: LAW OFFICE 118

File Location

Current Location: INTENT TO USE SECTION

Date in Location: Jan. 06, 2023

## Assignment Abstract Of Title Information - None recorded

**Proceedings - None recorded** 

sector-meteric beaution personal products before

Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 69 of 97 PageID 1417 Case 2:23-cv-02186-SHL-cgc Document 16-2 Filed 06/13/23 Page 1 of 25 PageID 241

# EXHIBIT B

3/12/23, 11:36 PM



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#### Our Favorites

1. Bozzuto

2. Camden Living

3. Trinity Property Consultants

- 4. Lincoln Property Company
- 5. Avalon Communities

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Anza Management Company
 Great Jones
 Mid-America Apartment Communities Inc.

in

- 4. Essex Property Trust
- 5. Equity Residential



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#### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 72 of 97 Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 72 of 97 Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 72 of 97

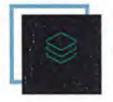
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#### Distant.

adjective relating to beliefs about what is morally right and wrong

#### a serie de la composición de la composi

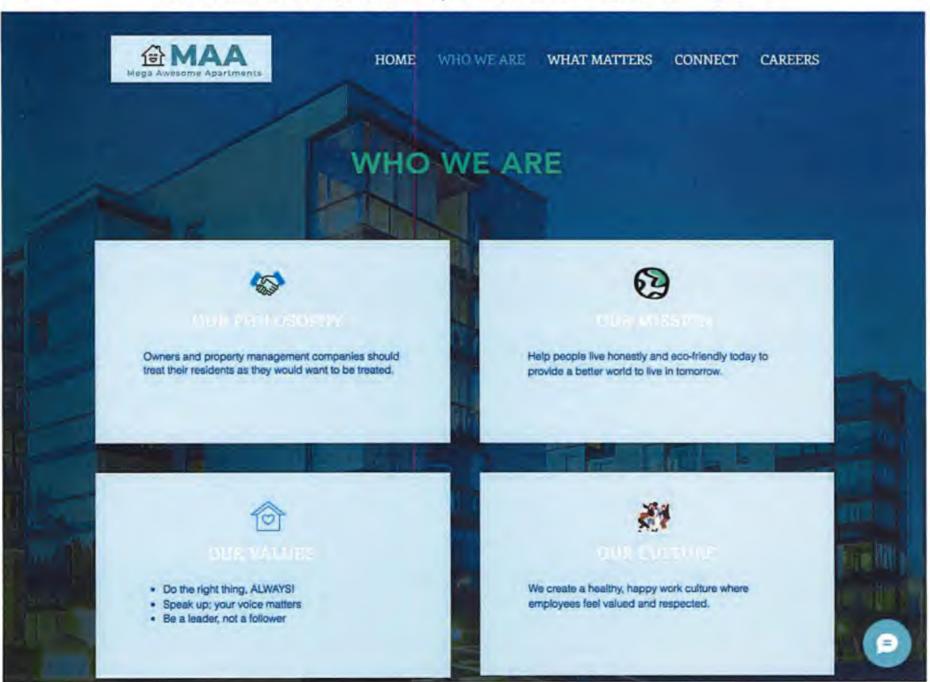
adjective not harmful to the environment, or trying to help the environment 3/12/23, 11:36 PM

#### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 74 of 97 Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 74 of 97 Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 74 of 97



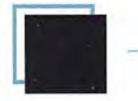
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Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 75 of 97 Case 2:23-cv-02186-SHL-cgc DocumePageD 1423 06/13/23 Page 7 of 25 PageID 247





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Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 78 of 97 Case 2:23-cv-02186-SHL-cgc Docume Page 10 f 25 PageID 250

adjective

relating to beliefs about what is morally right and wrong

adjective not harmful to the environment, or trying to help the environment 3/12/23, 11:37 PM

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 79 of 97 Case 2:23-cv-02186-SHL-cgc DocumePageD 1427 06/13/23 Page 11 of 25 PageID 251



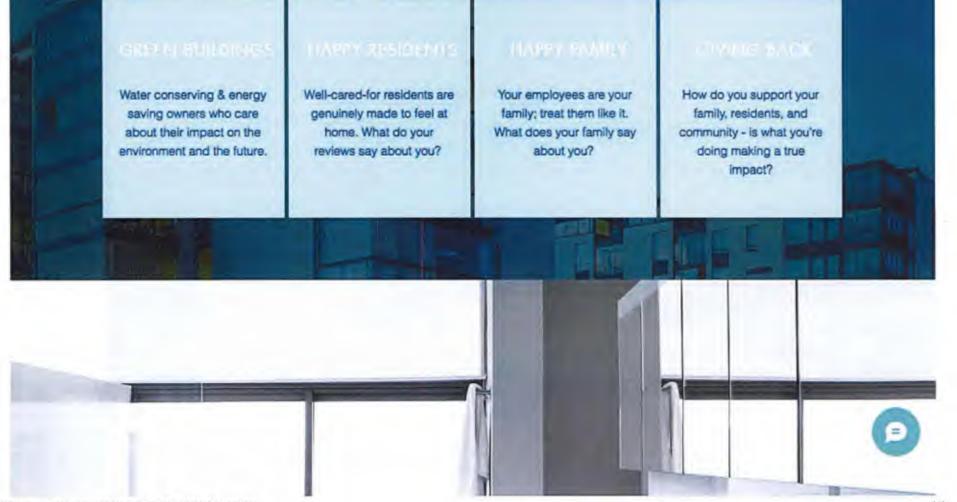
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### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 80 of 97 Case 2:23-cv-02186-SHL-cgc Docume #age D 1/25/24 Page 12 of 25 Page 12 o



HOME WHO WE ARE WHAT MATTERS CONNECT CAREERS

## WHAT MATTERS TO US

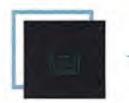


Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 81 of 97 Case 2:23-cv-02186-SHL-cgc Docume Rage D 1429 06/13/23 Page 13 of 25 PageID 253



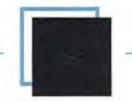
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3/12/23, 11:38 PM

3/12/23, 11:38 PM

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 82 of 97 Case 2:23-cv-02186-SHL-cgc Docume Page 10 1/25/24 Page 14 of 25 Page 10 254

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 83 of 97 Case 2:23-cv-02186-SHL-cgc Docume Plate D 1/25/24 Page 15 of 25 PageID 255

adjective relating to beliefs about what is morally right and wrong

adjective not harmful to the environment, or trying to help the environment

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Please utilize the contact form or email us at info@maa.apartments

We are ironing out the kinks of our search engine - stay tuned.

### YOUR NEW HOME AWAITS

We will help find you a Mega Awesome Apartment with a Mega Awesome management company!

A management company that cares about its residents and goes above and beyond!

First Name *	Last Name *
Enter Your First Name	Enter Your Last Name
Email *	
Enter Your Email	
Message *	
Enter Your Message	





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### MAA.Apartments

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3/12/23, 11:38 PM

#### 10.00

relating to beliefs about what is morally right and wrong

### adjective

not harmful to the environment, or trying to help the environment

3/12/23, 11:38 PM

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 88 of 97 Case 2:23-cv-02186-SHL-cgc Document age 06/13/23 Page 20 of 25 PageID 260



3/12/23, 11:39 PM



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We will help find you a Mega Awesome Apartment Career with a Mega Awesome Company!

We are also beginning to recruit for a variety of roles at our corporate office. Join our family today.

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e.g., name@email.com	e.g., 555-555-555
plying for *	Start Date *
Select position	Choose a date

Next



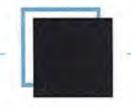
https://www.megaawesomeapartments.com/careers

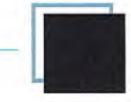


#### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 91 of 97 Case 2:23-cv-02186-SHL-cgc Document age 10 1439 06/13/23 Page 23 of 25 PageID 263

# MAA.Apartments FIND YOUR MEGA AWESOME APARTMENT!







Free Registration

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**Rigid Scoring System** 

Apartments Everywhere

Whether you live on the east coast, west coast, or in between, we have you covered! 3/12/23, 11:39 PM

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 92 of 97 Case 2:23-cv-02186-SHL-cgc Docume Plate D 1/25/24 Page 24 of 25 PageID 264

#### and the second second

adjective relating to beliefs about what is morally right and wrong

#### 100

adjective not harmful to the environment, or trying to help the environment. 3/12/23, 11:39 PM

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 93 of 97 Case 2:23-cv-02186-SHL-cgc Docume Page D 1440 06/13/23 Page 25 of 25 PageID 265



 Case 2:23-cv-02186-SHL-cgc
 Document 87-5
 Filed 01/25/24
 Page 94 of 97

 Case 2:23-cv-02186-SHL-cgc
 Document 97 06/13/23
 Page 1 of 4
 PageID 266

# EXHIBIT C

Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 95 of 97 Case 2:23-cv-02186-SHL-cgc Document 16-3 1443 06/13/23 Page 2 of 4 PageID 267

### BASS BERRY + SIMS.

Paige W. Mills pmills@bassberry.com (615) 742-7770

March 14, 2023

### VIA CONTACT INFO AT INFO@MAA.APARTMENTS And EMAIL ADDRESSES FOR GOOGLE REGISTRANT

megaawesomeapartments.com maaapartments.com maa.apartments maafraud.com info@maa.apartments 3bk88q8kg92j99wc4@proxyregistrant.email tgtqx6p59n8frhsdj@proxyregistrant.email p22tqxmbc2wngbnrc@proxyregistrant.email

Re: Unauthorized use of trademarks and domain names; trademark infringement and cybersquatting

To Whom it May Concern:

This firm represents Mid-America Apartment Communities, Inc ("MAA"), a real estate investment trust that owns, manages, acquires and develops quality apartment communities. Please direct all further contact on this matter to my attention.

MAA is the owner of a family of MAA trademarks for apartment management and rental services, including the following federal registrations and pending applications: Fed. Reg. No. 4009475, MAA for "leasing of apartments" (the "MAA Mark"); Fed. Reg. No. 3268349, MID-AMERICA APARTMENT COMMUNITIES for "leasing of apartments; leasing of real estate; rental of apartments; Fed. Appl. 88716497, MAA A BRIGHTER VIEW for "leasing of apartments, leasing of real estate, rental of apartments, leasing of real estate, rental of apartments; of real estate, rental of apartments; for "leasing of apartments, leasing of real estate, rental of apartments;" and Fed. Appl. 88716061, MAA COMMUNITIES, for "leasing of apartments, leasing of real estate, rental of apartments;" collectively "the MAA Marks." MAA has been using its MAA Mark in interstate commerce since at least early 2011. During this time, the distinctive MAA Mark has become well-known to consumers and the apartment rental marketplace and has become strongly associated with our client. The MAA Mark represents substantial and valuable goodwill, which has come to symbolize MAA in the minds of these consumers and marketplace participants.

It has come to our attention that you have registered and are using the infringing domain names maa.apartments, maa.fraud, and maaapartments.com (the "Infringing Domain Names"), which incorporate and are confusingly similar to MAA's registered MAA Mark for commercial gain. You are using these Infringing Domain Names to drive consumers to your infringing website megaawesomeapartments.com (the "Infringing Website") and to harass and tarnish our client. Your Infringing Website uses MAA's Mark in an infringing logo (the "Infringing Logo")

150 Third Avenue South, Suite 2800 Nashville, TN 37201 bassberry.com

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 96 of 97 Case 2:23-cv-02186-SHL-cgc Document 96-3 1444 06/13/23 Page 3 of 4 PageID 268

Letter to Megaawesomeapartments.com March 14, 2023 Page 2

prominently featured on the site. MAA has not authorized you to use or register the MAA Mark as part of the Infringing Domain Names, Website, or Logo, is not affiliated, connected, or associated with you, and does not sponsor or endorse your business. Thus, you have no legitimate interest in these Infringing Domain Names. Moreover, you are using the Domain Name in bad faith in connection with a website that merely serves as a vehicle to confuse customers and denigrate and harass our client.

Our client is further aware that you have created a LinkedIn Account using the MAA Marks in an effort to promote the Infringing Website and have described your company in such a way as to increase the likelihood that consumers would believe your business is affiliated with our client. You have created a fake persona as the CEO of your Infringing Website, which further demonstrates your bad faith and the illegitimacy of your business. There is no doubt that your use and registration of the Domain Names are a blatant attempt to trade on the goodwill of MAA's Marks and constitutes, among other things, a violation of the Uniform Domain Name Dispute Policy ("UDRP"), by which you agreed to be bound when you registered the Domain Name with Google, unlawful cybersquatting under the federal Anti-Cybersquatting Consumer Protection Act (15 U.S.C. § 11125(d)); trademark infringement under the Lanham Act (15 U.S.C. §[ 1114(1) and] 1125(a)) and state law; and trademark infringement and deceptive trade practices the Tennessee Consumer Protection Act. The civil remedies available for these violations include immediate and permanent injunctive relief, cancellation or transfer of your domain name, recovery of your profits, and up to three times the amount of monetary damages suffered by our client, as well as an award of our client's attorney's fees.

Please also be advised that you are not permitted to delete any documents, files, electronic data of any kind, or accounts because you are obligated to preserve any and all evidence that might have any bearing on this dispute. If, in any subsequent litigation involving this dispute, it is determined that you destroyed or spoliated evidence, our client will be seeking all available remedies for such conduct including, but not limited to, sanctions and an order holding that such evidence would have supported our client's claims.

MAA has asked that we contact you in an effort to resolve this matter swiftly and amicably. We therefore demand that, by no later than COB March 20, 2023, you do the following:

- Contact me at the number at either 615-742-7770 or <u>pmills@bassberry.com</u> and reveal your true identity so that these issues may be negotiated and promptly resolved;
- 2. Preserve all evidence that could have any relevance to this dispute;
- Immediately cease using the Domain Names and any other domain name that incorporates the MAA Mark or any variation of the MAA Marks;
- Arrange for the immediate transfer of the Domain Names and any other domain name that incorporates the MAA Mark or any variation of the MAA Marks mark to MAA; and
- Cease using the MAA Mark, and any other terms or phrases that are confusingly similar to the MAA Marks in any domain name, Website, Logo, or otherwise in connection with your business activities;

### Case 2:23-cv-02186-SHL-cgc Document 87-5 Filed 01/25/24 Page 97 of 97 Case 2:23-cv-02186-SHL-cgc Document 91 1445 06/13/23 Page 4 of 4 PageID 269

Letter to Megaawesomeapartments.com March 14, 2023 Page 3

 Immediately deactivate the false LinkedIn profile for maa.apartments, as well as deactivate any other social media account you have made to promote the Infringing Website.

We strongly urge you to take this matter with the utmost seriousness. If we do not hear from you by the above date, MAA is prepared to take any and all legal action necessary to protect its rights, including but not limited to initiating a UDRP proceeding and/or filing suit in federal court under the Lanham Act, the ACPA, and other applicable law as set forth above. In the federal action, we will be pursuing subpoenas and other discovery methods to determine your identity so that litigation may proceed against you. Be advised that we will also be pursuing a take-down procedure through Google and/or Wix. Our client may pursue one or more of these remedies simultaneously without further notice to you.

This letter is not intended as an exhaustive statement of all the facts and law relevant to this situation. MAA expressly reserves all of its legal and equitable rights and remedies, including the right to seek injunctive relief and recover monetary damages, attorney's fees, and costs without further notice to you should you fail to promptly comply with these demands.

Paige Mulls

Paige Waldrop Mills

cc: Mid-America Apartment Communities, Inc.

35322725.1

Document 87-6 PageID 1446

Ex. 1a

From: Gerry Gensleer <gender9999@hotmail.com> Date: December 29, 2022 at 11:47:53 AM To: Gerry Gensleer Subject: [EXTERNAL] Release of Information

Good morning,

Unfortunately, if we do not see some sort of announcement by 1/6/2022, we will be releasing further information/videos/audio/pictures/emails to the public, media and other government agencies.

These items have not yet been disclosed to anyone and are quite enlightening. We have given this matter long enough. If you are unsure what they are, ask around.

Thank you in advance for your understanding,

SW



Document 87-7 PageID 1447

Ex. 2A

From: Merry Jerry Berry <MerryJerry@outlook.com> Sent: Saturday, December 31, 2022 6:40 PM To: Resident Care <ResidentCare@maac.com> Subject: [EXTERNAL] A few more items

Good luck in Tom all your future endeavors. I forgot to mention - a leasing consultant, writing up a service manager? Then we fire him after he falls off a ladder? Terrible, Poor Ronald Totress – I'll send some documentation through whistleblower services.

1)A few years ago, when Ronda Kunsman was are RVP, a white employee, Ryan Anderson, called a black employee Addi Aliu, a nappy-headed hoe, in front of several employees. We let Jay Blackman know. Nothing was done, so someone emailed the CEO, Eric Bolton, about this anonymously. Instead of firing Ryan, he was moved to another property. There are probably still emails and audio around somewhere.

2) On Several occasions, Jay Blackman wanted to terminate/force to retire, Emerio and Vidal at Tysons Corner because of their age. He also made numerous comments about Justin Grady, the mentally challenged employee at Post Tysons corner. Glad I saved some conversations we had back then. Also glad this was related to Shane Mills as well. It looks pretty discriminatory... Oh well, I am sure there is some evidence somewhere...

3) (Actually, checked the pictures, 2019 in Atlanta I believe). At one of the PM conferences in North Carolina, I believe a property manager had a two-night relationship with someone from corporate. Good thing I was involved...

4) On Several occasions, white employees were given better rental increases than black employees. I mentioned this in another whistleblower complaint in 2020. Shortly after, MAA created a new policy to keep rental increases more consistent. The damage was already done, though; I have evidence of that.

There are probably about ten other items not brought up yet; I Just wanted to mention this so that you can look into it.

No response back is needed; not interested in MAAs fabrication of facts.

Have a safe and Happy New Year.



Ex. 3 A Email from TommyLGrimey

From: Tommy Grimey <TommyLGrimey51@hotmail.com> Sent: Sunday, January 1, 2023 3:31 PM To: Benefits <Benefits@maac.com> Subject: [EXTERNAL] Winter Storm Jesse

Hello There!

I just wanted to let you all know, that you will soon find out that your company and leaders have let you down. They were made aware of problems, discrimination and harassment in the beginning in 2017, 2019 and again in the begining of of 2021 and decided to ignore it. You can not just take advantage of employees and residents and get away with it forever.

Not even an NDA can stop the information from coming out. In the couple weeks, you will hear and see some pretty shocking things. I would recommend looking elsewhere for a more ethical employer. If IT manages to block these emails, they will still upload in your CRM. The information will also be sent out to several people as well if an announcement is not made soon.

Have a Great Day @ MAA!



From: MAA Reviews <Maareviews@outlook.com> Sent: Tuesday, February 21, 2023 7:11 AM To: Woo, Stephen <Stephen.Woo@maac.com>; Whitson, Melanie <Melanie.Whitson@maac.com>; Sill, Brad <Brad.Sill@maac.com>; Christopher.roetker@maac.com; Christopher.lynn@maac.com; Halbrook, Michael <Michael.Halbrook@maac.com> Subject: [EXTERNAL] Great review

We all had a good chuckle at MAAs self reporting in the last financials...that will throw regulators off..lol Your internal controls are garbage. Your inherent risks are lacking. This was all reported through your whistleblower hotline in 2021, has anything been done? Tom had a 'planned retirement - seriously?"

It's only a matter of time, never give up ....

They take their whistleblower complaints very seriously. You cannot get anything by them. A great deal of this was reported to them in April and September 2021, and they did everything they could to help address the concerns outlined! They even prevented me from communicating with the ER team, those rascals!

Great, ethical company! Competent people with great ideas. True risk-takers! Beautiful headquarters with a nice little break room with great snacks; I believe they also have Jonestown brand Flavor-Aid.

They have a skilled and robust IT team. You cannot get anything past their IT team; they are bright and on top of everything. When other companies were hacked a few years back, their amazing IT team was able to stop this before any of the thousands of resident files in their system or other information was stolen. Excellent job, MAA! They hired a Senior VP of IT operations that spent a great deal of time working for EY. So, he definitely knows what he is doing! The fantastic team at MAA!

Their senior employees are long-tenured, and their CEO is soo good at property management that the board of directors made him the board's chairman! They said it was because of his vast 30 years of experience in property management. Even though most experts do not recommend this, MAA is so good at what they do that the board could not resist.

Their financials and transactions are definitely legit! They had two different law firms review them, so you know they are real! Their EVP of general counsel is also brilliant and crafty; He has been working for the company for 20 + years as well!

Thankfully, MAA has its own insurance "program"! The company has some of the best casualty insurance ever seen! You do not have to send the information to the insurance company; they pay it out! In 2021, almost 30 million dollars of damage was reimbursed because of what that named storm did! Oh, that storm Uri, did so much damage; I remember all my flowers had frost on them. Not to mention the costs of COVID-19-related items!

MAA's Insurance "Program" also must cover all breed restrictions because they do not even ask for proof that a resident's renters' insurance covers restricted breeds. They are such a great company! A Pitbull could have previously attacked a neighbor, and that resident was asked to



move out. It is excellent, though, because MAA does not even check your last apartment for reference! Such a tremendous ethical company.

When residents move in, MAA states that safety is their responsibility. Of course, it is part of fair housing! They are so bright that MAA.

All the grills at their properties work very well. They are all appropriately vented, and their grill maintenance program is strictly followed. The grills flamed up so high and bright. You could cook your food very fast and get a new free hairstyle.

The COO did so well that he could retire at 53! They even let him go without a proper replacement! They care about their employees.

Unfortunately, they do not offer most employees stock options. That is ok, though; most of their employees cannot think for themselves. MAA tells them what they want to hear. They are a spectacular company!

They filed with the SEC and have an experienced board of directors. It all sounds very legit. Yup, nothing to see there! I can go on and on and on, but I will not do that here, but it has been almost two years.

Document 87-10 Filed 01/25/24 PageID 1451

Page 1 of 1

From: Conflict Interest <conflictinterest682@gmail.com> Sent: Wednesday, February 22, 2023 9:57 AM To: Employee Relations < Employee.Relations@maac.com>; Carpenter, Melanie <Melanie.Carpenter@maac.com>; Wolfgang, Leslie <Leslie.Wolfgang@maac.com>; Hill, Brad <Brad.Hill@maac.com>; Hill, Brad <Brad.Hill@maac.com> Subject: [EXTERNAL] Re: Conflict of Interest

On Wed, Feb 22, 2023 at 10:54 AM Conflict Interest <conflictinterest682@gmail.com> wrote: Bass Berry Simms did your financial review Baker Donelson Did the case studdy.

Interesting.



From: Conflict Interest <conflictinterest682@gmail.com> Sent: Wednesday, February 22, 2023 10:03 AM To: Employee Relations <Employee.Relations@maac.com>; Carpenter, Melanie <Melanie.Carpenter@maac.com>; Wolfgang, Leslie <Leslie.Wolfgang@maac.com>; Hill, Brad <Brad.Hill@maac.com>; Hill, Brad <Brad.Hill@maac.com> Subject: [EXTERNAL] Re: Conflict of Interest

Thanks! Happy New Year!

On Wed, Feb 22, 2023 at 10:59 AM Conflict Interest <conflictinterest682@gmail.com> wrote: MAA, take its whistleblower complaints very seriously. Their internal controls are rock solid. A great deal of this was reported to them in April and September 2021, and they did everything they could to help address the concerns outlined. You cannot keep anything from them. They even prevented me from communicating with the ER team, those rascals.

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I thought they were self-insured for casualty? Thankfully, MAA has its own insurance "program." They changed the wording in their financials in 2009 from company to "program." Still, they negotiate their casualty insurance rates every year. The company or program has some of the best casualty insurance ever seen. You do not have to send the information to the insurance company; they pay it out. In 2021, almost 30 million dollars of damage was reimbursed because of what that named storm did. Oh, that storm Uri, did so much damage; I remember all my flowers had frost on them. Not to mention the costs of COVID-19-related items.



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All the grills at their properties work very well. They are all appropriately vented, and their grill maintenance program is strictly followed. The grills flamed up so high and bright. You could cook your food very fast and get a new free hairstyle...

Their water remediation program is second to none. If you are one of the lucky ones with a flood in your apartment, MAA is there to help. They may help clean up the flood by having their inadequately trained maintenance team dry the flood and complete a thorough check for possible hazards. MAA will also instruct you to call your renters insurance because it is just apartment living.

They care about their employees. The COO did so well that he could retire at 53. They even let him go without a proper replacement. The press release stated this was a "planned retirement." They are very friendly to help him retire at such a young age.

They are a spectacular company. Unfortunately, they do not offer most employees stock options. That is ok, though; most of their employees cannot think for themselves. MAA tells them what they want to hear.

It all sounds very legit ..

On Wed, Feb 22, 2023 at 10:54 AM Conflict Interest <conflictinterest682@gmail.com> wrote: Bass Berry Simms did your financial review Baker Donelson Did the case studdy.

Interesting.

From:	Philly <phillydee100@gmail.com></phillydee100@gmail.com>
Sent:	Tuesday, April 11, 2023 1:57 PM
To:	Mills, Paige
Cc:	mphillyd@gmail.com; Mattern, Richard
Subject:	Re: Mid-America Apartment Communities - MAA

Thanks. Happy to discuss any of this at anytime. I will take a look at specific instructions and respond by the deadline.

Most of these emails, names, accounts, I do not recall creating. I have been pretty open with my complaints. It is on Google, for all the world to see under my name. I have also been pretty open with communicating with MAA.

The information I provided to the SEC, DOJ, and IRS was regarding a whistleblower complaint against MAA, Baker Donelson and your law firm, Bass, Berry Pro shop as well.

Thank you Dennis

On Tue, Apr 11, 2023 at 2:42 PM Mills, Paige < PMills@bassberry.com> wrote:

Attached is what was provided to the process server to serve on you. The instructions for responding to a subpoena are also included.

Best,

Paige Mills

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com



#### Document 87-12 Filed 01/25/24 Page 2 of 5 PageID 1455

From: Philly <<u>phillydee100@gmail.com</u>> Sent: Tuesday, April 11, 2023 1:33 PM To: Mills, Paige <<u>PMills@bassberry.com</u>> Cc: <u>mphillyd@gmail.com</u>; Ihde, Erin K. <<u>EIhde@bassberry.com</u>>; Mattern, Richard <<u>rmattern@bassberry.com</u>> Subject: Re: Mid-America Apartment Communities - MAA

There is no exhibit A. Do you have a copy?

On Tue, Apr 11, 2023, 2:27 PM Mills, Paige < PMills@bassberry.com> wrote:

Mr. Philipson,

The items you have been ordered to produce are set forth in Exhibit A to the Subpoena. It doesn't matter if you have already produced it to someone else. It must still be produced to us in order to comply with the subpoena.

Best Regards,

Paige Mills

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: Philly <<u>phillydee100@gmail.com</u>> Sent: Tuesday, April 11, 2023 12:45 PM To: Mattern, Richard <<u>rmattern@bassberry.com</u>>; Mills, Paige <<u>PMills@bassberry.com</u>> Cc: <u>mphillyd@gmail.com</u>; Ihde, Erin K. <<u>EIhde@bassberry.com</u>> Subject: Re: Mid-America Apartment Communities - MAA I got a subpoena @ my house? For John Doe?

What exactly are you looking for? Most of this stuff has been provided to the DOJ and the SEC and the IRS? P Mills name is on this subpoena.

Thanks

On Fri, Apr 7, 2023, 3:08 PM Philly cphillydee100@gmail.com wrote:

Hi Richard,

I have brought up issues with them since 2021 and gave them plenty of opportunities to respond. I also questioned their internal controls while I was at the company for almost five years. They should be able to describe what I am alleging.

There is also a pretty clear review of the headquarters on Google. My only concern was, Bass, Berry & Sims review of statements made in their financials. Some of those statements seemed inaccurate. I know Robert at MAA was a member of Bass Berry & Sims in 2005 and represented MAA. Was just curious the last time your firm reviewed those statements in documents submitted to the SEC.

I do not want to defame or speak poorly about anyone or any company unless what I am saying is true and accurate.

Thank you for your response.

Dennis

On Fri, Apr 7, 2023 at 2:51 PM Mattern, Richard <rmattern@bassberry.com> wrote:

Mr. Philipson,

Thank you for bringing this matter to our attention. I'm the lawyer that represents MAA. If you would like to send me the complaints that you reference, I would be happy to review it to develop an understanding of what MAA did.

Thanks in advance.

Best Regards, Richard

#### **Richard Mattern** Member

#### Bass, Berry & Sims PLC

The Tower at Peabody Place - 100 Peabody Place, Suite 1300 Memphis, TN 38103-3672 901-543-5933 phone 901-270-0263 mobile rmattern@bassberry.com • www.bassberry.com

From: F T <mphillyd@gmail.com<mailto:mphillyd@gmail.com>> Sent: Friday, April 7, 2023 10:22 AM To: Ihde, Erin K. <EIhde@bassberry.com<mailto:EIhde@bassberry.com>>; info@bassberry.com<mailto:info@bassberry.com>; contact@bassberry.com<mailto:contact@bassberry.com> Subject: Mid-America Apartment Communities - MAA

Hi Erin,

Who at Bass Berry Sims handles/represents MAA - Mid-America Apartment Communities Inc? We are about to publicly release a complaint we filed with the SEC, DOJ, and IRS regarding the accuracy of their financials in 2021. We brought this to the attention of MAA in 2021.

In these documents, it says that your firm reviewed statements made in their financials. We know and have documentation that MAA's EVP of General Counsel represented your firm in 2005.

We are not here to upset anyone or make your law firm look bad. This is strictly about MAA.

Thank you for your assistance,

Dennis Philipson

### Document 87-12 Filed 01/25/24 Page 5 of 5 PageID 1458

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

Document 87-13 PageID 1459 Page 1 of 1

2/23/23 11:45AM Topic: General Contact City: Memphis State: Tennessee Community: First Name: Benard Last Name: Bullton Email: Berna6728@aol.com Phone: 9143162356 Additional Notes: This is for Melanie Carpenter and Employee Relations.

May I suggest another misleading press release?

Like the one in October 2022 as well as the one on 12/13/2021? Ever growing ESG program? Haha. . . you think aligning your goals with the SEC goals is going to help? Probably Mr Delpriore idea.

So let's see -

Manipulation of a securities
 False and misleading financial statements
 False and misleading press releases
 Inherent risks not listed
 Much more!

Have a nice day!!



#### Case 2:23-cv-02186-SHL-cgc Document 87-14 Filed 01/25/24 Page 1 of 1 PageID 1460

From: Craig Silver <welcome@maaapartments.com> Sent: Saturday, March 4, 2023 2:39 PM To: welcome@maaapartments.com Subject: [EXTERNAL] Please Visit us at MAAApartments!

Good afternoon!

Please visit one of our many sites at MAA.Apartments or MAAApartments.com.

We look forward to seeing you!



Case 2:23-cv-02186-SHL-cgc	Document 87-15	Filed 01/25/24	Page 1 of 1
•	PageID 1461		•

The game has just begun

Fri, 03/10/2023 - 09:14

Secure Web Form

#### ORIGINAL SUBMISSION

Have until tax day. MAA fraud maapartments on the web Huge social media following Quit lying to your employees and shareholders Eric is a POS.



Begin forwarded message: From: MAA IS FULL OF IT <MAAisFuLLofSHIT@outlook.com> Date: February 22, 2023 at 6:30:23 PM CST To: MAA IS FULL OF IT <MAAisFuLLofSHIT@outlook.com> Subject: See Attached

Read your financials ...... And your reviews:

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All the grills at their properties work very well. They are all appropriately vented, and their grill maintenance program is strictly followed. The grills flamed up so high and bright. You could cook your food very fast and get a new free hairstyle...

Their water remediation program is second to none. If you are one of the lucky ones with a flood in your apartment, MAA is there to help. They may help clean up the flood by having their inadequately trained maintenance team dry the flood and complete a thorough check for possible hazards. MAA will also instruct you to call your renters insurance because it is just apartment living....

They care about their employees. The COO did so well that he could retire at 53. They even let him go without a proper replacement. The press release stated this was a "planned retirement." They are very friendly to help him retire at such a young age..

They are a spectacular company. Unfortunately, they do not offer most employees stock options. That is ok, though; most of their employees cannot think for themselves. MAA tells them what they want to hear.

It all sounds very legit ..

From: Dennis Philipson <mphillyd2@gmail.com> Sent: Wednesday, November 10, 2021 12:58 PM To: Russell, Glenn <Glenn.Russell@maac.com> Subject: Re: [EXTERNAL] Re: Whistleblower submission - MAA

Hello Glenn,

Unfortunately, I will be unable to speak about this. I will reach out if this should change.

Thank you again and good luck.

Dennis

On Wed, Nov 10, 2021 at 11:27 AM Dennis Philipson <mphillyd2@gmail.com> wrote: Hi Glenn,

Thanks, OK, now I understand. That is what I wanted to know, the preliminary report is presented to internal staff, such as the CFO. Waiting for a response about speaking to you more, will let you know. Thanks,

Dennis

On Wed, Nov 10, 2021 at 11:16 AM Russell, Glenn <Glenn.Russell@maac.com> wrote: Thanks for the quick replies to all of these emails. Friday is my preliminary report – to CEO, CFO, and General Counsel. A more full report is due later this month on the September call – to the Audit Committee. IA is independent – see our IA charter that reflects this.

Would you be able to speak after Friday? - As in, that is a specific date on some ongoing related complaint? Or your schedule in general does not allow? Etc.

Or, again, being advised not to speak to MAA at all – for the foreseeable future? Sorry for the additional questions – just making sure I understand if the availability to speak to me is more schedule related (after Friday works) or situational related (definitively should pursue other avenues).

Thanks so much! Glenn

> Glenn Russell, CPA, CIA SVP, Internal Audit 6815 Poplar Avenue, Suite 500



#### Case 2:23-cv-02186-SHL-cgc

#### Document 87-17 Filed 01/25/24 Page 2 of 6 PageID 1465

Ex. 012 11/10/2021 Emails btn DP and Glenn Russell regarding Whistleblower Submission on 4/6/2021

Germantown, TN 38138 P: 901-435-5412 M: 901-568-3052 www.maac.com

From: Dennis Philipson <mphillyd2@gmail.com> Sent: Wednesday, November 10, 2021 9:58 AM To: Russell, Glenn <Glenn.Russell@maac.com> Subject: Re: [EXTERNAL] Re: Whistleblower submission - MAA

#### Hi Glenn,

I understand; I apologize, I do not think I would be able to speak before Friday, so I recommend pursuing other avenues. By involved, I meant who receives the reports related to whistleblower allegations and who you give your preliminary report to on Friday. By my understanding from your explanation, you are presenting these reports to the independent audit committee only.

I would also recommend widening your investigation into CLS at MAA; I do not believe it is confined to the DMV only.

Perhaps in the future, we can speak, but not by Friday. Thank you very much for your openness and honesty.

Dennis

On Wed, Nov 10, 2021 at 10:35 AM Russell, Glenn <Glenn.Russell@maac.com> wrote: Hey Dennis,

I sure would like to get on the phone with you.

I think I could answer these questions more thoroughly for you – to the extent I can of course. However, I understand that you are hesitant and appreciate being made aware of that. If you are not able to or been advised not to talk to anyone with MAA by your advisors, I understand.

Just let me know that, and I will proceed with the investigation through other avenues.

Regarding your question – "involved in the internal reports and preliminary reports" Not sure exactly what you are looking for by "involved" as I don't want to misinterpret that word - but perhaps the following bullets will be on target with your question.

 Financial oriented allegations are currently being investigated (September submission) by me. April submission related to Winkler pool financial allegations was also investigated by me.

 Non-financial allegations or comments in the submissions are not being investigated by me. I do not know specially who these are being handled by. I have been told there is an active

EEOC case on some of these topics, but I do not know anymore than that vague comment.

If "involved" means who is in investigating that should answer that.

 If "involved" means who is being interviewed related to the allegations, that is a very lengthy list:

- Financial accounting personnel too many to list all
- o Former RSD
- o Current RLD

Others named in your allegations (the financial oriented allegations). For example, I may/have talked to Jay - but only about CLS or Winkler or LSS or similar and NOT about non-financial allegations.

 If "involved" means who gets the reports related to the investigation of whistleblower allegation of a financial nature, then that is the independent Audit Committee. As a publicly traded company, MAA is required to have a avenue for these type of whistleblower submissions and these are to be investigated and report to the independent Audit Committee.

Hopefully that helps.

Again, if you are not able to or been advised not to talk to anyone with MAA by your advisors, I understand.

Just let me know that, and I will proceed with the investigation through other avenues. Thank you.

#### Glenn Russell, CPA, CIA

SVP, Internal Audit 6815 Poplar Avenue, Suite 500 Germantown, TN 38138 P: 901-435-5412 M: 901-568-3052 www.maac.com

From: Dennis Philipson <mphillyd2@gmail.com> Sent: Wednesday, November 10, 2021 9:11 AM To: Russell, Glenn <Glenn.Russell@maac.com> Subject: Re: [EXTERNAL] Re: Whistleblower submission - MAA

#### Hi,

I understand, because of the way MAA treated me during my last few days with the company, you can understand why I may be hesitant to speak with anyone from the company.

Who is involved in the internal reports and preliminary reports?

Thanks,

On Wed, Nov 10, 2021 at 9:53 AM Russell, Glenn <Glenn.Russell@maac.com> wrote: Dennis,

Thanks for the quick reply.

I was hoping to get with you on the September submission and my related questions today or tomorrow.

I have to make my preliminary report internally on that one by this Friday. Regarding April, I can verbally give you the summary – just the more formal report in the required format - will be 11/30.

Hope that makes sense

Is there a number I could reach you at to discuss the September submission? Also, is there a particular time this afternoon or tomorrow morning that works for you?

Thank you Glenn

Glenn Russell, CPA, CIA

SVP, Internal Audit 6815 Poplar Avenue, Suite 500 Germantown, TN 38138 P: 901-435-5412 M: 901-568-3052 www.maac.com

From: Dennis Philipson <mphillyd2@gmail.com> Sent: Wednesday, November 10, 2021 8:45 AM To: Russell, Glenn <Glenn.Russell@maac.com> Subject: [EXTERNAL] Re: Whistleblower submission - MAA

Hello Glenn,

I hope you have been well. I would be happy to try to answer your questions regarding my September submission after I have a chance to review the report from the submission in April.

Thanks for reaching out.

Dennis

On Wed, Nov 10, 2021 at 9:05 AM Russell, Glenn <Glenn.Russell@maac.com> wrote:

Hello Dennis,

Thank you for the note.

Regarding the April submission, I was the one that reviewed that detail and provided a report to our independent Audit Committee.

I am reviewing the requirements and format of the reporting that will be submitted to the caller on that submission (you) and will get that posted back to the Whistleblower website before November 30.

I want to make sure I use the appropriate format/template for that report.

Regarding the September call submitted related to the accounting practice of casualty loss items, I wondered if you had time to get on a call with me to answer a few questions around some of the allegations and materials that you submitted. Do you have availability this afternoon or tomorrow for a call perhaps?

Or do you prefer that I submit my questions to you via email?

Thank you Glenn

> Glenn Russell, CPA, CIA SVP, Internal Audit 6815 Poplar Avenue, Suite 500 Germantown, TN 38138 P: 901-435-5412 M: 901-568-3052 www.maac.com

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From: Dennis Philipson <mphillyd2@gmail.com> Sent: Wednesday, September 22, 2021 8:27 AM To: Russell, Glenn <Glenn.Russell@maac.com> Subject: [EXTERNAL] Complaint fr5dygikuryskb

Good morning Glenn,

I hope that you are well. I submitted a whistleblower complaint, fr5dygikuryskb back on 4/6/2021. Am I able to get a follow-up report? I thought the whistleblower policy said I would be informed of the results? Perhaps I misinterpreted the policy.

I also submitted a whistleblower complaint yesterday; I believe there was some fraud going on there. I cannot be sure, but the way casualty loss was handled at MAA seemed very unethical. That is zuydoiiq779yn0.

If I can be of any more assistance, please let me know.

Thank you,

Dennis Philipson

#### Case 2:23-cv-02186-SHL-cgc Document 87-18 Filed 01/25/24 Page 1 of 2 PageID 1470

Ex. 017 12.1.2021 Emails between DP and Glenn Russell re: WB submissions

From: Dennis Philipson <mphillyd2@gmail.com> Sent: Wednesday, December 1, 2021 5:28 PM To: Russell, Glenn <Glenn.Russell@maac.com> Subject: [EXTERNAL] Re: Whistleblower submission on 11/24/21

One more thing, I misread your initial email. Sorry, was at work reading quick

I submitted a comment on 11/24 and 11/30 on my initial submissions, yes. I have not submitted anything new.

Thanks.

Good luck.

De

On Wed, Dec 1, 2021, 3:46 PM Dennis Philipson <mphillyd2@gmail.com> wrote: Hello again,

I wanted to add. I know what I know, and everything I have mentioned is the truth. I know what I witnessed over the last several years. I know you have current employees that have or are still commiting "accounting errors". I also started receiving texts from current employees, assuming you started questioning them.

Again, being that MAA dismissed my comments when I was asked to leave the company, I have a hard time trusting anyone at MAA. MAA has always done what is best for them, not their employees or residents.

No offense to you, I would assume you need to be very ethical in your position.

I want to review the report from April to make sure I am not being portrayed as crazy, as MAA is making me seem in their position statement to the EEOC.

Again, nothing against you, you seem like a great honest person.

Dennis

On Wed, Dec 1, 2021, 2:51 PM Dennis Philipson <mphillyd2@gmail.com> wrote: Hello Glenn,

I hope you had a nice Thanksgiving as well.

I am still waiting to hear back from my original submission from April.



# Case 2:23-cv-02186-SHL-cgc Document 87-18 Filed 01/25/24 Page 2 of 2 PageID 1471

Ex. 017 12.1.2021 Emails between DP and Glenn Russell re: WB submissions

Dennis

On Wed, Dec 1, 2021, 2:26 PM Russell, Glenn <Glenn.Russell@maac.com> wrote: Good afternoon Dennis. Hope you had a good Thanksgiving.

I was curious if you submitted a NEW call into the whistleblower hotline on 11/24/21 in the evening?

Thank you Glenn UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TENNESSEE Western Division Office of the Clerk

Wendy R. Oliver, Clerk 242 Federal Building 167 N. Main Street Memphis, Tennessee 38103 (901) 495-1200 Deputy-in-Charge U.S. Courthouse, Room 262 111 South Highland Avenue Jackson, Tennessee 38301 (731) 421-9200

#### NOTICE OF SETTING Before Chief Judge Sheryl H. Lipman, United States District Judge

January 30, 2024

#### RE: 2:23-cv-02186-SHL Mid-America Apartment Communities, Inc. v. Dennis Philipson

Dear Sir/Madam:

# A STATUS CONFERENCE has been SET for THURSDAY, FEBRUARY 8, 2024 at 3:30 P.M. (CST) before Chief Judge Sheryl H. Lipman.

The conference will be held <u>via Microsoft Teams Video</u>. A link to the video conference will be emailed to the attorneys and Pro Se party prior to the setting.

#### The Parties should be prepared to discuss all pending motions.

If you have any questions, please contact the case manager at the telephone number or email address provided below.

Sincerely, WENDY R. OLIVER, CLERK BY: <u>s/Joseph P. Warren</u>, Case Manager Supervisor 901-495-1242 joseph\_warren@tnwd.uscourts.gov

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

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MID-AMERICA APARTMENT COMMUNITIES, INC.,
Plaintiff,
V.
DENNIS MICHAEL PHILIPSON,
Defendant.

No. 2:23-cv-2186-SHL-cgc

#### **ORDER FOR DEFENDANT TO SHOW CAUSE**

On January 30, 2024, the Court set a status conference in this matter to be conducted on February 8, 2024, via Microsoft Teams. (ECF No. 88.) Notice of the hearing was sent via the Court's electronic filing system to counsel of record for Plaintiff Mid-America Apartment Communities, Inc. ("MAA"), and was sent to <u>pro se</u> Defendant Dennis Michael Philipson at his home via United States mail and via electronic mail to four email addresses that Mr. Philipson appears to have used at various times before and during this litigation.<sup>1</sup> Three attorneys appeared on behalf of MAA at the status conference. Mr. Philipson did not appear at any point during the hearing.<sup>2</sup>

Mr. Philipson is hereby **ORDERED TO SHOW CAUSE** why he did not appear for the status conference and why the Court should not hold him in contempt. Mr. Philipson's response to this Order must be in writing and be filed on the docket by February 22, 2024. Failure to

<sup>&</sup>lt;sup>1</sup> The Court received notifications that the emails were undeliverable to two of the four email addresses.

 $<sup>^{2}</sup>$  Mr. Philipson previously failed to appear at a status conference and the judicial mediation in this matter. (See ECF Nos. 72 & 74.)

respond to this Order will result in sanctions, including, but not limited to, a finding that Mr.

Philipson is in contempt of court.

The Clerk is **DIRECTED** to mail this Order to:

Dennis Michael Philipson 6178 Castleton Way Alexandria, VA 22310

The Clerk shall also email this Order to Dphilipson1982@yahoo.com and

mphilly@gmail.com.

IT IS SO ORDERED, this 8th day of February, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

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MID-AMERICA APARTMENT COMMUNITIES, INC.,
Plaintiff,
V.
DENNIS MICHAEL PHILIPSON,
Defendant.

No. 2:23-cv-2186-SHL-cgc

#### **ORDER FOR DEFENDANT TO SHOW CAUSE**

Before the Court is Plaintiff Mid-America Apartment Communities, Inc.'s ("MAA") Motion for Preliminary Injunction, filed January 25, 2024, pursuant to Federal Rule of Civil Procedure 65. (ECF No. 81.) Under the Local Rules of this Court, responses to motions, with certain exceptions that are inapplicable here, "shall be filed within 14 days after service of the motion and shall be accompanied by a proposed order." LR 7.2(a)(2). A "[f]ailure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion." <u>Id.</u>

The Certificate of Service in the motion indicates that MAA mailed it to <u>pro se</u> Defendant Dennis Michael Philipson via email and regular mail on January 25, 2024. (ECF No. 81 at PageID 893.) Under the Federal Rules of Civil Procedure, when service is effectuated via mail, three additional days are added to the response time. <u>See</u> Fed. R. Civ. P. 6(d). Given this additional time for service, Mr. Philipson's response was due on Monday, February 12, 2024.<sup>1</sup> To date, Mr. Philipson has failed to respond to the motion.

<sup>&</sup>lt;sup>1</sup> Because the three additional days for service made Mr. Philipson's deadline to respond a Sunday, the deadline was extended one day. See Fed. R. Civ. P. 6(a)(2)(C).

## Case 2:23-cv-02186-SHL-cgc Document 91 Filed 02/13/24 Page 2 of 2 PageID 1476

Rule 65 provides that "[n]o preliminary injunction shall be issued without notice to the adverse party." Fed. R. Civ. P. 65(a)(1). The Sixth Circuit has interpreted this Rule to require a hearing, but only "when there are disputed factual issues, and not when the issues are primarily questions of law." <u>Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.</u>, 511 F.3d 535, 552 (6th Cir. 2007) (citing <u>Lexington–Fayette Urban Cnty. Gov't v. BellSouth</u> Telecomm., Inc., 14 F. App'x. 636, 639 (6th Cir. 2001)).

Mr. Philipson's failure to respond to the motion means that the factual basis for MAA's motion is thus far undisputed. Nevertheless, Mr. Philipson is hereby **ORDERED TO SHOW CAUSE**, within twenty-one days of the entry of this Order, as to whether there is a dispute as to any of the facts in MAA's motion, and to otherwise respond to the motion. If Mr. Philipson fails to respond to this Order, in writing and on the docket by March 5, 2024, the Court will consider the facts in the motion undisputed, will not conduct an evidentiary hearing, and will proceed to evaluate the questions of law at issue in the motion.

The Clerk is **DIRECTED** to mail this Order to:

Dennis Michael Philipson 6178 Castleton Way Alexandria, VA 22310

The Clerk shall also email this Order to Dphilipson1982@yahoo.com and mphilly@gmail.com.

IT IS SO ORDERED, this 13th day of February, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APART COMMUNITIES, INC.	MENT,
COMMUNICATIES, INC.	Plaintiff,
v.	
DENNIS PHILIPSON,	
	Defendant.

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

#### MAA'S MOTION FOR SANCTIONS OF JUDGMENT AND PERMANENT INJUNCTION AGAINST PHILIPSON

Plaintiff Mid-America Apartment, Communities, Inc. ("MAA" or "Plaintiff"), by and through counsel, submits this Motion for Sanctions of Judgment and Permanent Injunction against Philipson.

Throughout the course of this lawsuit, Defendant Dennis Philipson has repeatedly evaded MAA's requests and this Court's Orders. Philipson has failed to comply with the discovery rules and has now failed to appear at a Court-ordered mediation and two separate status conferences. Further, Philipson has ignored two show cause orders from this Court, (Dkt. 90, 91). As such, MAA respectfully requests that this Court grant the sanction of Judgment and Permanent Injunction against Philipson and his harassing and stalking of MAA and its employees.

#### BACKGROUND

On April 11, 2023, Defendant Dennis Philipson ("Philipson" or "Defendant") was personally served with a subpoena (the "Philipson Subpoena"). The Philipson Subpoena provided that a response was due by April 27, 2023. On April 17, 2023, Philipson filed a Motion to Quash (Dkt. 2, 3) without providing any other written objections to Plaintiff. Philipson's Motion to Quash did not raise objections as to any particular document request but raised general objections to the Subpoena as a whole. Plaintiff timely filed a Response to the Motion to Quash (Dkt. 13) on April 28, 2023.

On May 16, 2023, this Court issued an Order denying Philipson's Motion to Quash (Dkt. 15). On that same day, Plaintiff served the Court's Order on Philipson by email and requested performance under the Subpoena by May 22, 2023. Although Philipson has used numerous email addresses to hide his identity and harass and intimidate MAA and its employees, Plaintiff's counsel used two email addresses for communication with him that it had previously used to correspond with him in this matter regarding the Motion to Quash: mphillyd@gmail.com and phillydee100@gmail.com. Philipson did not respond to this email, nor did he make any production by May 22, 2023. On May 30, 2023, Plaintiff's counsel again reached out to Philipson by email requesting that he provide dates and times for a meet and confer on his failure to respond. A true and correct copy of this email is attached hereto as **Exhibit A**. Plaintiff's counsel further stated that if Philipson did not respond before the week was over, his failure to respond would be taken as an indication that he has no intention of complying.

Philipson did not provide any times for a meet and confer and made no response of any kind. MAA subsequently learned from productions from other third parties that the Infringing Domains and Infringing Website described in the Complaint (and now the First Amended Complaint), were set up and managed from an IP Address belonging to Philipson. (*See* Dkt. 16). Accordingly, Plaintiff amended its Complaint and named Philipson as the sole Defendant. (*Id.*).

Plaintiff then filed a Motion asking this Court to find Philipson in Contempt for failing to respond to a lawfully issued Subpoena of this Court and further requested it assess an award of Plaintiff's attorney fees as a sanction against him for his failure to comply. (Dkt. 19).

## Case 2:23-cv-02186-SHL-cgc Document 92 Filed 03/06/24 Page 3 of 8 PageID 1479

In Philipson's response, he mentioned emails that exist, but were never produced. (Dkt. 22). Months later, Philipson produced two documents that "he found in a file cabinet:" (1) A "Statement of Interment, Cremation, and Wishes," which said "[i]f I should die or something happens to me under mysterious circumstances, please look at employees or contractors connected to [MAA] due to my EEOC and SEC claim;" and (2) a "Reasonable Accommodation Verification for Assistance Animal," which says he is entitled to an "[e]motional support dog due to mental illness." Only the first was responsive to MAA's request. MAA served its Initial Disclosures (attached hereto as **Exhibit B**) and First Set of Document Requests to Philipson (attached hereto as **Exhibit C**) on September 15, 2023. On September 19, 2023, MAA's Counsel emailed Philipson regarding whether he made any Initial Disclosures, to which he replied: "THERE IS NONE!" A true and correct copy of this email is attached hereto as **Exhibit D**.

MAA filed a Notice Regarding its Motion to Compel on October 11, 2023 (Dkt. 62). The Notice detailed the categories of documents Philipson failed to produce, which include: documents relating to the infringing domains; documents related to his alleged whistleblowing complaints; documents relating to MAA Employees; documents relating to this litigation; documents relating to Google Reviews of MAA; and documents relating to correspondence with MAA. (*Id.*). Philipson did not file a response to MAA's Notice, so it is, therefore, unopposed and uncontradicted. On October 16, 2023, MAA served its Second Set of Document Requests on Philipson. Philipson did not respond in any way to this Second Set of Document Requests. Even as recently as last week, Philipson, via one of his dozens of communications through the MAA whistleblower portal, offered to meet with the company to provide them with all the "information and knowledge he has." *See* Whistleblower Communication attached at **Exhibit E**. A follow-up submission instructed that "[a]ll the necessary documents have been dispatched to the corporate

headquarters this very moment, utilizing FedEx Ground services . . . ." *Id.* The submission also included instructions on how to access the information on USB drives included in the shipment. *Id.* Although the submission was anonymous, it was clearly Philipson following up on his previous submission. He further emailed MAA's confidential polices to the joint defense group in its anti-trust lawsuit. *See* Exhibit F. All of these examples make clear he has information and documents that he has not produced in discovery in this case.

Not only has Philipson failed to produce the requested documents, he has also flouted this Court's rules by failing to appear on multiple occasions. After this Court referred this case to Mediation with Chief Magistrate Judge Pham, Judge Pham set a video status conference for November 14, 2023. After multiple attempts from the Court to reach him, Philipson failed to appear. Philipson also failed to appear, for the video mediation hearing with Judge Pham on November 29, 2023. Most recently, Philipson failed to appear on February 8, 2024, for a status conference with this Court. On all three occasions, MAA's counsel was present, and for the mediation hearing on November 29, MAA representatives were present. This Court entered a Show Cause Order on February 8 (Dkt. 90), ordering Philipson to provide cause for his failures to appear. This Court also entered a Show Cause Order on February 13 (Dkt. 91), ordering Philipson to respond to MAA's Motion for Injunctive Relief by March 5. He did not respond to either.

#### **ARGUMENT**

# I. Philipson's Blatant Disregard for This Court's Orders Warrants Sanctions for Judgment in MAA's Favor.

Pursuant to Federal Rule of Civil Procedure 16, this Court "may issue any just orders [including entering default judgment against the disobedient party] if a party or its attorney: (A) fails to appear at a scheduling or other pretrial conference." Fed. R. Civ. P. 16(f)(1)(A); *see Braswell v. Glisson*, No. 3:21-cv-00145, 2022 WL 2500325 (M.D. Tenn. July 6, 2022). When

determining whether judgment is an appropriate sanction, courts consider four factors: "(1) whether the subject party's failure to cooperate is due to willfulness, bad faith, or fault; (2) whether the opposing party was prejudiced by the dilatory conduct of the subject party; (3) whether the subject party was warned that failure to cooperate could lead to dispositive outcome; and (4) whether less drastic sanctions were imposed or considered before disposition was ordered." *Braswell*, 2022 WL 2500325, at \*2. "No single factor is determinative, although the Sixth Circuit has held that dispositive relief is properly granted where there is a clear record of delay or contumacious conduct." *Id.* at \*3.

Philipson has acted in bad faith in his attempts to avoid this litigation against him. He has repeatedly blocked MAA's counsel and this Court's personnel, so that he cannot be reached when he does not want to be. However, he is always able to reach MAA's counsel and this Court when it suits him, as evidenced by the multiple motions and notices he has filed. MAA has clearly been prejudiced by Philipson's unwillingness to comply with discovery obligations and appear at multiple Court-ordered conferences. MAA has expended substantial resources in attempting to compel Philipson's cooperation and participation. This Court has been required to issue multiple Show Cause Orders to compel his participation, which he continues to ignore, and he has been warned that failure to respond may result in an entry of default (*see* Dkt. 21). The factors weigh in MAA's favor.

#### II. RELIEF REQUESTED

Therefore, MAA respectfully requests that this Court grant judgment in its favor. Specifically, MAA requests an order making the following findings and granting the following relief:

• that MAA has valid and existing rights in the Marks described in the First Amended Complaint (Dkt. 16);

- that Philipson's conduct constitutes an infringement of those rights;
- that Philipson is liable under each claim for the relief set forth in the First Amended Complaint (Dkt. 16);
- that Philipson is liable to MAA for all damages it has suffered by reason of his unlawful acts;
- that Philipson is required to pay enhanced and/or punitive damages to MAA, as determined by this Court, for his deliberate and willful trademark infringement and unfair competition;
- that Philipson is required to pay MAA treble damages for the injury he has caused under Tennessee's Consumer Protection Act;
- that Philipson is required to pay MAA's reasonable attorneys' fees and disbursements incurred during this litigation;
- that Philipson is required to pay MAA all damages to which it is entitled for his defamation, negligence *per se*, deceit, intentional interference with prospective business advantage, and violations of the Tennessee Personal and Commercial Computer Act of 2003;
- that Philipson is required to pay MAA the cost of this action;
- that Philipson is required to pay pre- and post-judgment interest on all amounts to which Plaintiff is due.

MAA will produce declarations as to the amount of damages once the judgment is granted. MAA further requests this Court grant the relief requested in the attached Proposed Order of Permanent Injunction (*see* Exhibit G) which reflects prohibitions about additional harassing conduct Philipson has committed since MAA filed its original motion.

#### **CONCLUSION**

Philipson has failed to cooperate throughout this litigation. He has failed to appear for Court-ordered appearances on three separate occasions. Further, he has failed to produce responsive documents, despite his representations that show they exist. Accordingly, Plaintiff requests that this Court issue sanctions rendering a default judgment against Philipson for his noncompliance and well as an order granting a permanent injunction. In the alternative, Plaintiff requests that this Court order Philipson to comply with its multiple discovery requests, and award Plaintiff its reasonable attorney fees for bringing the instant motion. Plaintiff further requests any additional relief that the Court finds to be appropriate.

Respectfully Submitted,

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: (615) 742-6200 pmills@bassberry.com

John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com jordan.thomas@bassberry.com

Counsel for Mid-America Apartment Communities, LLC

#### **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by the ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 Phillydee100@gmail.com

This 6th Day of March, 2024.

/s/ Paige Waldrop Mills Paige Waldrop Mills

# EXHIBIT A

From: Sent: To: Cc: Subject: Mills, Paige Tuesday, May 30, 2023 4:36 PM Philly mphillyd@gmail.com; McClanahan, Teresa RE: Mid-America Apartment Communities - MAA

Mr. Philipson,

You are long past due in responding to the subpoena that MAA issued to you. Please provide some dates and times that you can have a meet and confer on your failure to respond. If you do not respond with dates and time to have a meet and confer before the week is out, I will take your failure to respond as an indication that you have no intention to complying with the subpoena and will proceed with the filing of a motion to compel.

Thank you,

Paige Mills

## BASS BERRY+SIMS

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: Mills, Paige
Sent: Tuesday, May 16, 2023 9:24 AM
To: 'Philly' <phillydee100@gmail.com>
Cc: mphillyd@gmail.com; McClanahan, Teresa <TMcClanahan@bassberry.com>
Subject: RE: Mid-America Apartment Communities - MAA

Mr. Philipson:

Attached please find Judge Lipman's Order from this morning denying your motion to quash. The subpoena required compliance on or before April 27, 2023. We are now more than two weeks past that date. Please provide all responsive documents on or before Monday, May 22, 2023.

Thank you,

Paige Mills

## BASS BERRY+SIMS

Paige Mills Member Case 2:23-cv-02186-SHL-cgc

Document 92-1 PageID 1487 Filed 03/06/24 Page 3 of 9

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: Philly <phillydee100@gmail.com>
Sent: Friday, April 14, 2023 3:50 PM
To: Mills, Paige <PMills@bassberry.com>
Cc: mphillyd@gmail.com; McClanahan, Teresa <TMcClanahan@bassberry.com>
Subject: Re: Mid-America Apartment Communities - MAA

Thanks. Sounds good **b** 

On Fri, Apr 14, 2023, 4:48 PM Mills, Paige <<u>PMills@bassberry.com</u>> wrote:

Yes, it is filed in the Western District of Tennessee, Docket NO. 2:23-cv-02186, in front of Judge Lipman. However, going forward, If you have retained a lawyer, I cannot correspond with you directly without his or her express permission.

Best Regards,

Paige Mills

## BASS BERRY+SIMS

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: Philly <<u>phillydee100@gmail.com</u>> Sent: Friday, April 14, 2023 3:42 PM To: Mills, Paige <<u>PMills@bassberry.com</u>> Cc: mphillyd@gmail.com; Mattern, Richard <<u>rmattern@bassberry.com</u>>; Ihde, Erin K. <<u>Elhde@bassberry.com</u>>; Trademarks <<u>Trademarks@bassberry.com</u>> Subject: Re: Mid-America Apartment Communities - MAA

Good afternoon Bass, Berry Pro,

Document 92-1 PageID 1488 Filed 03/06/24

Page 4 of 9

Can I have the judge and courts contact info this was filed in? Several reasons my attorney's said this can be quashed. I did not see it anywhere in the attached or the 1/2 version I was served.

Thanks!

Dennis Philipson

On Wed, Apr 12, 2023, 8:45 AM Philly <<u>phillydee100@gmail.com</u>> wrote:

For seven years I watched MAA commit fraud, lie, cheat, steal, take advantage of residents. I watched them instruct me and others to miscode items, lie about storm damage, purposely avoid fire watch to save money. I was harassed over and over and over again.

There are 1000s of negative reviews. When the reviews got too bad, MAA asked employees to write new ones.

I saw a girl murdered in October of 2021. I saw MAA charge exorbitant late fees, no grace period, artificially inflate rent, etc, etc, etc.

I am not going to be intimidated by them, or any of their law firms. Especially ones that I submitted whistleblower complaints on.

So, see you then end of April.

Thanks for the opportunity.

Dennis Philipson

#### On Wed, Apr 12, 2023, 8:11 AM Philly <<u>phillydee100@gmail.com</u>> wrote:

https://www.gbreb.com/MAA/About%20Us/History/Sites/MAA/About/History.aspx?hkey=344aedee-0beb-45a7-a2b0-d4c0d53fc042

On Tue, Apr 11, 2023, 2:56 PM Philly <<u>phillydee100@gmail.com</u>> wrote:

Thanks. Happy to discuss any of this at anytime. I will take a look at specific instructions and respond by the deadline.

Most of these emails, names, accounts, I do not recall creating. I have been pretty open with my complaints. It is on Google, for all the world to see under my name. I have also been pretty open with communicating with MAA.

The information I provided to the SEC, DOJ, and IRS was regarding a whistleblower complaint against MAA, Baker Donelson and your law firm, Bass, Berry Pro shop as well.

Thank you Dennis

On Tue, Apr 11, 2023 at 2:42 PM Mills, Paige <<u>PMills@bassberry.com</u>> wrote:

Attached is what was provided to the process server to serve on you. The instructions for responding to a subpoena are also included.

Best,

Paige Mills

Case 2:23-cv-02186-SHL-cgc

Document 92-1 PageID 1490

Filed 03/06/24 Pag

A Page 6 of 9

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: Philly <phillydee100@gmail.com>
Sent: Tuesday, April 11, 2023 1:33 PM
To: Mills, Paige <<u>PMills@bassberry.com</u>>
Cc: mphillyd@gmail.com; Ihde, Erin K. <<u>Elhde@bassberry.com</u>>; Mattern, Richard <<u>rmattern@bassberry.com</u>>
Subject: Re: Mid-America Apartment Communities - MAA

There is no exhibit A. Do you have a copy?

On Tue, Apr 11, 2023, 2:27 PM Mills, Paige <<u>PMills@bassberry.com</u>> wrote:

Mr. Philipson,

The items you have been ordered to produce are set forth in Exhibit A to the Subpoena. It doesn't matter if you have already produced it to someone else. It must still be produced to us in order to comply with the subpoena.

Best Regards,

Paige Mills

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com Case 2:23-cv-02186-SHL-cgc

Document 92-1 Filed 03/06/24 Page 7 of 9 PageID 1491

From: Philly <phillydee100@gmail.com>
Sent: Tuesday, April 11, 2023 12:45 PM
To: Mattern, Richard <<u>rmattern@bassberry.com</u>>; Mills, Paige <<u>PMills@bassberry.com</u>>
Cc: mphillyd@gmail.com; Ihde, Erin K. <<u>EIhde@bassberry.com</u>>
Subject: Re: Mid-America Apartment Communities - MAA

I got a subpoena @ my house? For John Doe?

What exactly are you looking for? Most of this stuff has been provided to the DOJ and the SEC and the IRS? P Mills name is on this subpoena.

Thanks

On Fri, Apr 7, 2023, 3:08 PM Philly <<u>phillydee100@gmail.com</u>> wrote:

Hi Richard,

I have brought up issues with them since 2021 and gave them plenty of opportunities to respond. I also questioned their internal controls while I was at the company for almost five years. They should be able to describe what I am alleging.

There is also a pretty clear review of the headquarters on Google. My only concern was, Bass, Berry & Sims review of statements made in their financials. Some of those statements seemed inaccurate. I know Robert at MAA was a member of Bass Berry & Sims in 2005 and represented MAA. Was just curious the last time your firm reviewed those statements in documents submitted to the SEC.

I do not want to defame or speak poorly about anyone or any company unless what I am saying is true and accurate.

Thank you for your response.

Document 92-1 PageID 1492

Dennis

On Fri, Apr 7, 2023 at 2:51 PM Mattern, Richard <<u>rmattern@bassberry.com</u>> wrote:

Mr. Philipson,

Thank you for bringing this matter to our attention. I'm the lawyer that represents MAA. If you would like to send me the complaints that you reference, I would be happy to review it to develop an understanding of what MAA did.

Thanks in advance.

Best Regards, Richard

### **Richard Mattern**

Member

#### Bass, Berry & Sims PLC

The Tower at Peabody Place - 100 Peabody Place, Suite 1300 Memphis, TN 38103-3672 901-543-5933 phone 901-270-0263 mobile rmattern@bassberry.com • www.bassberry.com

From: F T <<u>mphillyd@gmail.com</u><<u>mailto:mphillyd@gmail.com</u>>> Sent: Friday, April 7, 2023 10:22 AM To: Ihde, Erin K. <<u>EIhde@bassberry.com</u><<u>mailto:EIhde@bassberry.com</u>>; <u>info@bassberry.com</u><<u>mailto:info@bassberry.com</u>>; <u>contact@bassberry.com</u><<u>mailto:contact@bassberry.com</u>> Subject: Mid-America Apartment Communities - MAA

Hi Erin,

Who at Bass Berry Sims handles/represents MAA - Mid-America Apartment Communities Inc? We are about to publicly release a complaint we filed with the SEC, DOJ, and IRS regarding the accuracy of their financials in 2021. We brought this to the attention of MAA in 2021.

In these documents, it says that your firm reviewed statements made in their financials. We know and

Case 2:23-cv-02186-SHL-cgc

#### Document 92-1 Filed 03/06/24 Page 9 of 9 PageID 1493

have documentation that MAA's EVP of General Counsel represented your firm in 2005.

We are not here to upset anyone or make your law firm look bad. This is strictly about MAA.

Thank you for your assistance,

Dennis Philipson

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

# EXHIBIT B

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

) ) )

MID-AMERICA APARTMENT , COMMUNITIES, INC.		
,	Plaintiff,	
V.		
DENNIS PHILIPSON		
	Defendant.	

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

# PLAINTIFF MID-AMERICA APARTMENT COMMUNITIES, INC'S INITIAL DISCLOSURES

)

Plaintiff Mid-America Apartment Communities, Inc. ("MAA") hereby provides its initial disclosures pursuant to Rules 26(a)(1) and 26(f) of the Federal Rules of Civil Procedure.

#### PRELIMINARY STATEMENT

These initial disclosures are based on information reasonably available to MAA as of the date of these disclosures. MAA's investigation of possible witnesses and documents is ongoing and it reserves the right to supplement and amend these disclosures to provide additional information acquired during the course of discovery, and to rely on such information and documents as evidence in this action. By making these disclosures, MAA does not represent that it is identifying every witness, document, tangible thing and/or piece of electronically-stored information ("ESI") possibly relevant to this lawsuit, nor does MAA waive his right to object to the production of any document or tangible thing on the basis of any privilege, the work product doctrine, relevancy, undue burden or any other valid objection. Rather, MAA's disclosures represent his good faith effort to identify information subject to the disclosure requirements of Rule 26(a)(1).

#### Case 2:23-cv-02186-SHL-cgc Document 92-2 Filed 03/06/24 Page 3 of 9 PageID 1496

MAA's disclosures are made without in any way waiving: (1) the right to object on the grounds of competency, privilege, relevancy, materiality, hearsay, undue burden, or any other proper basis, to the use of any such information for any purpose, in whole or in part, in any subsequent stage or proceeding in this lawsuit or any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery proceeding involving or relating to the subject matter of these disclosures. Furthermore, these disclosures are not an admission by MAA regarding any matter. All of the disclosures set forth below are made subject to the above objections and qualifications.

#### **INITIAL DISCLOSURES**

I. <u>Rule 26(a)(1)(A)(i)</u>. The name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Witness Name/Contact Info	Substance of Knowledge	Availability
Timothy P. Argo	This witness has knowledge	This individual is an MAA
Executive VP, Chief Strategy	of Defendant's harassing	employee and is reachable
& Analysis Officer	activities and his use of MAA	through undersigned counsel.
	employee names in email	
	address to harass these	
	individuals and to obtain the	
	Infringing Domains and/or	
	Website.	
Melanie M. Carpenter	This witness has knowledge	This individual is an MAA
Executive VP, Chief Human	of Defendant's work history	employee and is reachable
Resources Officer	and performance with MAA	through undersigned counsel.
	and knowledge of his	
	harassing activities after left	
	MAA's employ.	
Leslie B.C. Wolfgang	This witness has knowledge	This individual is an MAA
Senior VP, Chief Ethics &	of Defendant's work history	employee and is reachable
Compliance Officer &	and performance with MAA	through undersigned counsel.
Corporate Secretary	and knowledge of his	
	harassing activities after left	
	MAA's employ.	

Jackie Melnick Senior VP, East Division	This witness has knowledge of Defendant's work history and performance with MAA and knowledge of his harassing activities after left MAA's employ.	This individual is an MAA employee and is reachable through undersigned counsel.
Jay Blackman, CAM Regional Vice President	This witness has knowledge of Defendant's work history and performance with MAA and knowledge of his harassing activities after left MAA's employ.	This individual is an MAA employee and is reachable through undersigned counsel.
Anwar N. Brooks Director Employee Relations	This witness has knowledge of Defendant's work history and performance with MAA and knowledge of his harassing activities after left MAA's employ.	This individual is an MAA employee and is reachable through undersigned counsel.
Amber Fairbanks EVP, Property Management	This witness has knowledge of Defendant's harassing activities after left MAA's employ.	This individual is an MAA employee and is reachable through undersigned counsel.
Glenn Russell Senior VP, Internal Audit	This witness has knowledge of Defendant's harassing activities after left MAA's employ.	This individual is an MAA employee and is reachable through undersigned counsel.
Eric Bolton Chairman and CEO	This witness has knowledge of Defendant's harassing activities after left MAA's employ.	This individual is an MAA employee and is reachable through undersigned counsel.
Unknown Individuals at Massage2Book	Upon information and belief, these individuals have knowledge of Defendant's attempts to impersonate and harass certain MAA employees.	Currently, Plaintiff has no contact information for these potential witnesses.
Unknown Individuals at Twitter.com	Upon information and belief, these individuals have knowledge of Defendant's attempts to impersonate and harass certain MAA employees.	Currently, Plaintiff has no contact information for these potential witnesses.
Unknown Individuals at Adultfriendfinder.com	Upon information and belief, these individuals have knowledge of Defendant's attempts to impersonate and	Currently, Plaintiff has no contact information for these potential witnesses.

	harass certain MAA employees.	
Unknown Individuals at AvalonBay Communities	Upon information and belief, these individuals have knowledge of Defendant's attempts to impersonate and harass certain MAA employees.	Currently, Plaintiff has no contact information for these potential witnesses.
Robin Breazier LinkedIn rbreazier@linkedin.com	Ms. Breazier provided information on behalf of Linkedin regarding certain infringing activity that took place on LinkedIn involving the MAA Marks.	This witness is reachable via the contact information provided.
Karyna Yakushenko Custodian of Records Wix.com 40 Namal Tel-Aviv St. Beit Yoel Tel Aviv, Israel 63506	Ms. Yakushenko issued the Wix.com records that established the IP addresses associated with one or more of the Infringing Domains.	This witness is reachable via the contact information provided.
Rex Looney Verizon Security Subpoena Compliance 180 Washington Valley Road Bedminster, NJ 07921	Mr. Looney issued the Verizon records that established that one of the IP addresses used in one of the infringing domains belonged to Defendant	This witness is reachable via the contact information provided.
Alex Eppenauer Paralegal Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104	Ms. Eppeauer has knowledge of certain Microsoft email addresses used in the harassment of MAA and their use in conjunction with the infringement of MAA's trademarks	This witness is reachable via the contact information provided.
Ra Bacchus Google Legal Investigations Support Google-legal- support@google.com	Mr. Bacchus provided certain Google records associated with the harassment of MAA and one or more of the Infringing Domains	This witness is reachable via the contact information provided.
Unknown Consumers/Customers	These individuals have knowledge of Defendant's attempt to confuse the marketplace and infringe on MAA's trademarks	Currently, Plaintiff has no contact information for these potential witnesses.

#### Case 2:23-cv-02186-SHL-cgc Document 92-2 Filed 03/06/24 Page 6 of 9 PageID 1499

As discovery and further investigation proceed, MAA may identify additional individuals that it may use to support its defenses. MAA reserves the right to identify such persons as the issues in the case are developed. MAA also reserves the right to modify or supplement these disclosures and to use and introduce at the trial of this matter with respect to any individual (1) whose name or scope of knowledge are disclosed or ascertained through discovery or are otherwise identified by Defendant, (2) to conform to the evidence presented, or (3) subsequently identified or later produced as a witnesses.

- II. <u>Rule 26(a)(1)(A)(ii)</u>. A copy or a description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
  - 1. Documents referred to in, or attached to, the Complaint and Amended Complaint;
  - 2. Third Party Subpoenas issued to various parties;
  - 3. Documents produced in Response to numerous third party subpoenas issued in this case;
  - 4. Harassing emails sent from Defendant to MAA, its employees, and third parties;
  - 5. Records from the UDRP Proceeding relating to the Infringing Domains;
  - 6. Records related to Defendant's purchase and use of the Infringing Domains and/or Websites;
  - 7. Documents relating to Defendant's use of Google Reviews;
  - 8. Documents relating to Defendant's attempts to impersonate and harass various MAA employees;
  - 9. All documents identified or produced by Defendant in this action.
  - 10. Any other documents that become necessary to respond to allegations, claims or defenses raised by Defendant.

MAA reserves the right to assert a claim of privilege or immunity and withhold from

production any documents, whether or not included above, that are protected from discovery by

#### Case 2:23-cv-02186-SHL-cgc Document 92-2 Filed 03/06/24 Page 7 of 9 PageID 1500

the attorney-client privilege, work-product immunity, common interest privilege, or any other privilege or immunity. MAA also reserves the right to introduce as evidence and rely upon materials that are not presently within its possession, custody, or control, but that are produced by the other Parties or third-parties in this litigation. As discovery and further investigation proceed, MAA may identify additional categories of documents, electronically-stored information, and/or tangible things that it may use to support its claims. Finally, MAA reserves the right to withhold production of documents until an appropriate protective order is entered by the Court to the extent confidential documents become at issue in this litigation.

III. <u>Rule 26(a)(1)(A)(iii)</u>. A computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

MAA expects to provide expert proof of its damages in accordance with the deadlines in the Court's Case Management Order. MAA will be seeking the damages available for the various claims that MAA has asserted in the Amended Complaint, including for its attorney fees and expenses, which it plans to present for the Court's consideration after trial or other appropriate disposition of the case. As discovery and further investigation proceed, MAA reserves the right to supplement this initial disclosure as permitted by the Federal Rules of Civil Procedure, the Court's Local Rules, and other applicable laws.

IV. <u>Rule 26(a)(1)(A)(iv)</u>. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

None.

Document 92-2 PageID 1501

DATED this 15th day of September, 2023.

Respectfully Submitted,

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 pmills@bassberry.com

/s/ John Golwen John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com Jordan.thomas@bassberry.com

Counsel for Mid-America Apartment Communities, LLC

Case 2:23-cv-02186-SHL-cgc

Document 92-2 Fil PageID 1502

# **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing Initial Disclosures was served on the individual below by email and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 mphilly@gmail.com

This 15th Day of September, 2023.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

36289301.1

Document 92-3 PageID 1503

# EXHIBIT C

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT , COMMUNITIES, INC.	
Plaintiff,	) )
V.	)
DENNIS PHILIPSON	)

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

Defendant.

#### FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT PHILIPSON

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Mid-America Apartment Communities, Inc. ("MAA"), by and through its attorneys, Bass Berry & Sims PLC, hereby requests that Defendant Dennis Philipson produce the documents requested below for inspection and copying at the offices of Bass, Berry & Sims, within thirty (30) days after the service hereof.

#### **INSTRUCTIONS**

1. These requests apply to all Documents in your possession, custody or control, regardless of whether such Documents are held by you or your affiliates, corporate parents, corporate subsidiaries, divisions, directors, officers, partners, designees, agents, managers, employees, representatives, attorneys, or assigns.

2. Pursuant to Federal Rule of Civil Procedure 34(b), all Documents shall be produced as they are kept in the usual course of business, or shall be organized and labeled to correspond to the categories of Documents set forth in each request.

#### Case 2:23-cv-02186-SHL-cgc Document 92-3 Filed 03/06/24 Page 3 of 11 PageID 1505

3. All electronically stored information responsive to a request shall be produced in single-page TIFF or color JPG format, as applicable, and in native file format. All corresponding metadata shall be produced in a load file compatible with Relativity.

4. Where any copy of any requested document is not identical to any other copy thereof, by reason of any alterations, marginal notes, comments, or material contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

5. If no Documents exist that are responsive to a particular request, you shall state so in writing.

6. If any document or any portion of any document requested herein is withheld from production, describe the basis for withholding the document or portion thereof, including any claim of a privilege or protection, in sufficient detail to permit the Court to adjudicate the validity of your withholding the document, and identify each document so withheld by providing at least the following information:

- a. the type of document (*e.g.*, memorandum, letter, report, etc.);
- b. the date, title and subject matter of the document;
- c. the identity, affiliation, and position of the author, the addressee(s), and all recipients of the document; and
- d. a statement of (i) the nature of the legal privilege or protection from discovery claimed and (ii) the factual basis for that claim of privilege or protection from discovery, including the facts establishing the claim of privilege or protection from discovery, the facts showing that the privilege has not been waived, and a statement as to whether the subject matter of the contents of the document is limited to legal advice or contains other subject matter.

7. If a portion of an otherwise responsive document contains information subject to a claim of privilege or protection from discovery, those portions of the document shall be redacted

#### Case 2:23-cv-02186-SHL-cgc Document 92-3 Filed 03/06/24 Page 4 of 11 PageID 1506

from the document, and the redacted portions shall be clearly marked as such, and the rest of the document shall be produced.

8. With respect to any responsive document that was formerly in your possession, custody or control and has been lost, destroyed or transferred out of your possession, custody or control, identify such document by setting forth its author(s), addressee(s), copyee(s), date, title, number of pages, subject matter, nature (*e.g.*, memorandum, letter, report, etc.), actual or approximate date on which the document was lost, destroyed or transferred, and, if destroyed, the conditions of and reasons for such destruction, and the names of the person authorizing and performing the destruction, and state the name and address of each person (if any) known to have possession, custody or control of such document.. The phrase "possession, custody or control" has the meaning set forth in Federal Rule of Civil Procedure 34 and should be interpreted as broadly as possible.

9. Each request herein shall be responded to separately and fully, unless it is in good faith objected to, in which case the objection and the bases therefore shall be stated with particularity. If an objection pertains only to a portion of a request, or to a word, phrase or clause contained therein, you shall state your objection to that portion only and respond to the remainder of the request. If, in answering these document requests, you claim that any document request, or a definition or instruction applicable thereto, is vague or ambiguous, you shall not use such claim as a basis for refusing to respond. Rather, you shall set forth as a part of the response the language claimed to be vague or ambiguous and the interpretation used to respond to the individual document request.

10. Each paragraph herein shall be construed independently and without reference to any other paragraph for the purpose of limitation.

#### Case 2:23-cv-02186-SHL-cgc Document 92-3 Filed 03/06/24 Page 5 of 11 PageID 1507

11. The use of a verb in any tense shall be construed as the use of a verb in all other tenses wherever necessary to bring within the scope of the request all responses which might otherwise be construed to be outside its scope.

12. The use of the singular form of any word includes the plural and vice versa.

13. The terms "all," "any," and "each" shall each be construed as encompassing any and all.

14. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

15. These requests are deemed continuing in nature, and you are obliged to produce responsive Documents and to supplement your production whenever additional Documents are located or their existence ascertained.

16. MAA reserves the right to serve additional requests for the production of Documents at a later time.

17. Unless otherwise indicated, these requests concern the period from January 1, 2020 to the present.

#### **DEFINITIONS**

1. The terms "you" and "your" refer to Defendant Philipson.

2. "Plaintiff" means MAA and its present or former predecessors-in-interest, successorsin-interest, subsidiaries, divisions, affiliates, partners, officers, directors, employees, agents, attorneys, representatives, and/or assigns.

3. "GlassDoor" shall refer to the website located at <u>https://www.glassdoor.com</u>.

4. "Google Reviews" shall refer to reviews left on Google Maps.

# Case 2:23-cv-02186-SHL-cgc Document 92-3 Filed 03/06/24 Page 6 of 11 PageID 1508

5. "Avalonbay Communities" shall refer to the apartment communities company with a website located at <a href="https://www.avaloncommunities.com/">https://www.avaloncommunities.com/</a>.

6. "LinkedIn" shall refer to the social media application located at https://www.linkedin.com.

7. "Document" shall mean any document or electronically stored information, including but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

8. "Communication" and "Communications" shall mean any oral or written utterance, notation, depiction, or statement of any nature whatsoever, including, but not limited to: correspondence, conversations, telephone calls, facsimiles, dialogues, discussions, interviews, consultations, telegrams, telexes, text messages, cables, e-mails, letters, voicemails, statements posted on or to the Internet, memoranda, agreements, and other verbal and non-verbal understandings.

- 9. "Identify" or "identity" means to state or a statement of:
  - a. in the case of a person other than a natural person, its name, the address of its principal place of business (including zipcode), its telephone number, and the name of its chief executive officer, as well as, if it has a person other than a natural person that ultimately controls it, that other person's name, the address of that person's principal place of business (including zipcode), that other person's telephone number, and the name of that other person's chief executive officer;
  - b. in the case of a natural person, his or her name, business address and telephone number, employer, and title or position;
  - c. in the case of a communication, its date, type (e.g., telephone conversation or discussion), the place where it occurred, the identity of the person who made the communication, the identity of the person who received the communication, the identity of each other person when it was made, and the subject matter discussed;

- d. in the case of a document, the title of the document, the author, the title or position of the author, the addressee, each recipient, the type of document, the subject matter, the date of preparation, and its number of pages; and
- e. in the case of an agreement, its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.

# **DOCUMENT REQUESTS**

1. All Documents and Communications concerning or sent to or from each of the

following email addresses:

- A. Gender99999@hotmail.com
- B. Frankreso28@gmail.com
- C. MerryJerryBerry@outlook.com
- D. Thomas.Grimey51@outlook.com
- E. Maareviews@outlook.com
- F. conflictinterest682@gmail.com
- G. melanieisgoingtojail@outlook.com
- H. Berna6728@aol.com
- I. welcome@maaapartments.com
- J. TomGrimey@outlook.com
- K. blackcharlie099@gmail.com
- L. GreatDayatMAA@hotmail.com
- M. MAAObstructs@outlook.com
- N. MAAObstruct@outlook.com
- O. RexBlago78@hotmail.com
- P. bganderland1801@gmail.com
- Q. tdudleyP@gmail.com
- R. tigerprincessT@gmail.com
- S. denalitarnosh@gmail.com

- T. rogerjackman278@gmail.com
- U. hansonvincent43@gmail.com
- V. sharksonp@gmail.com
- W. info@maa.apartment
- X. donniewillow652@gmail.com
- Y. Jillianpow201@gmail.com
- Z. WillBoi1526@gmail.com
- AA. Bolling.pete12@gmail.com

# **RESPONSE:**

2. All documents and communications you have sent to any third party concerning MAA and/or any employee of MAA.

# **RESPONSE:**

3. All documents and communications you have sent or received from GlassDoor concerning MAA, including screenshots of reviews or other communications you have posted online.

# **RESPONSE:**

4. All documents and communications you have sent or received using Google Reviews (via Google Maps) since 2020, including copies of any reviews you have posted, whether under your own name or an alias or other identity.

# **RESPONSE:**

5. All documents and communications you have sent or received from Avalonbay Communities since 2020.

# **RESPONSE:**

6. All documents and communications you have sent or received from LinkedIn since 2022.

#### **RESPONSE:**

7. All documents and communications you have sent or received from any present or past employee of MAA since 2021.

### **RESPONSE:**

8. All documents and communications you have sent or received concerning any of the following domains and/or websites:

- A. megaawesomeapartments.com
- B. maaapartments.com
- C. maa.apartments
- D. maafraud.com

### **RESPONSE:**

9. All documents and communications you have sent or received that relate to Craig Silver.

# **RESPONSE:**

10. All documents which support or refute any allegations you have made against MAA, whether in this litigation or to any federal agency.

# **RESPONSE:**

11. All documents that identify the IP address of your home computer and devices.

# **RESPONSE:**

12. All documents upon which you plan to rely at trial.

Document 92-3 PageID 1512

**RESPONSE:** 

Respectfully Submitted,

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 16218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 Fax: 615-429-0429 pmills@bassberry.com

Counsel for Mid-America Apartment Communities, LLC

Case 2:23-cv-02186-SHL-cgc

# **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing Request for Production of Documents was served on the individual below by email and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 mphilly@gmail.com

This 15<sup>th</sup> Day of September, 2023.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

36283787.1

Document 92-4 PageID 1514

# EXHIBIT D

From:	D <phillydee100@gmail.com></phillydee100@gmail.com>
Sent:	Tuesday, September 19, 2023 5:08 PM
То:	Mills, Paige
Cc:	Golwen, John S.; Thomas, Jordan; McClanahan, Teresa
Subject:	Re: Case Management/ Etc

#### THERE IS NONE!

On Tue, Sep 19, 2023 at 1:18 PM Mills, Paige <<u>PMills@bassberry.com</u>> wrote:

Mr. Philipson,

I apologize if I missed it but I do not see where you made any Initial Disclosures on your own behalf. Could you please provide those as soon as possible?

Thank you,

Paige Mills

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: D <<u>phillydee100@gmail.com</u>> Sent: Tuesday, September 12, 2023 6:45 AM To: Mills, Paige <<u>PMills@bassberry.com</u>> Cc: Golwen, John S. <<u>jgolwen@bassberry.com</u>>; Thomas, Jordan <<u>jordan.thomas@bassberry.com</u>>; McClanahan, Teresa <<u>TMcClanahan@bassberry.com</u>>; <u>phillydee100@gmail.com</u> Subject: RE: Case Management/ Etc Document 92-4 PageID 1516

Good morning,

I hope you are well. I've got quite a busy day, but I wanted to connect early to share some thoughts and clarifications.

Firstly, it was indeed a pleasure discussing matters with you yesterday. Your patience and understanding throughout were much appreciated. Please know I'm committed to upholding court protocols and will ensure I'm abreast of the necessary procedures.

Reflecting on our conversation, I recognize the value of addressing potential ethical concerns directly with the court rather than the Board of Professional Responsibility of the Supreme Court of Tennessee. I see this as a valuable learning experience.

On the topic of my departure from MAA, for everyone's clarity, could you reaffirm whether MAA's stance is that I was terminated, as opposed to resigning? Additionally, I noted in one of Paige's complaints a suggestion about my statements' credibility or my beliefs' genuineness. I trust the government investigations will soon shed more light on these matters. I am amazed the CFO is retiring; I saw that in a press release a few days back.

I've been reviewing my Gmail for any mentions of MAA or their employees. While I found a LinkedIn screenshot from Mr. Delpriore linking him with Bass, Berry, and Sims, there hasn't been much beyond that. Rest assured, I will send over anything I find by Friday.

To foster transparency and ensure the productivity of our discussions, I've outlined several key topics I believe would be beneficial to cover during our initial disclosures. This would eliminate the need to file a motion of expedited discovery.

1. An inventory of the 30-40 email addresses you claim are linked to me, complemented by the related subpoenas and feedback from the email service providers.

- 2. Details of any other subpoenas you've sought that are relevant to this case.
- 3. Automatic replies, if any, from <u>Mphillyd@gmail.com</u> and <u>phillydee100@gmail.com</u>.
- 4. Summaries or notes from conversations with MAA staff about the allegations made about me.
- 5. The damages MAA are claiming that I have caused.

Document 92-4 Filed 03/06/24 Page 4 of 11

PageID 1517
6. I want to highlight again the significance of the responses from Google, Wix, and Verizon, primarily to ensure that there have been no mistakes.

I recall interactions with my former supervisor involving former employees, particularly Lynette Harris. He had expressed concerns at times, like an incident involving Lynette and a damaged sliding glass door. There was also a moment in 2019 at Post Carlyle Square where my former boss offered a different narrative about a situation with a resident (Suggesting I lie to MAA). I've also seen reviews post-departure where residents felt compelled to specifically identify themselves, perhaps addressing MAA's apprehensions regarding the review's credibility. These memories might provide context as our discussions progress. It will be enlightening to clarify these matters, potentially during depositions.

For clarity, I've attached my original request. Your cooperation and understanding in this matter have been invaluable. Have a good day and week!

Dennis Philipson

From: phillydee100 <<u>phillydee100@gmail.com</u>> Sent: Saturday, September 9, 2023 6:11 AM To: Mills, Paige <<u>PMills@bassberry.com</u>> Cc: Golwen, John S. <<u>jgolwen@bassberry.com</u>>; Thomas, Jordan <<u>jordan.thomas@bassberry.com</u>>; McClanahan, Teresa <<u>TMcClanahan@bassberry.com</u>> Subject: Re: Case Management/ Etc

Good morning,

If you could allow me a few days, I'd be happy to review everything once more to ensure nothing has been overlooked. If there's a particular detail or item you have in mind, kindly bring it to my attention—it will expedite the process. Please note that my schedule is quite packed this week, but I'm committed to assisting you. I appreciate our mutual professionalism and cooperation.

Best,

Dennis Philipson

On Fri, Sep 8, 2023 at 8:06 PM phillydee100 <<u>phillydee100@gmail.com</u>> wrote:

Also to add:

I am not an attorney, but based on my understanding of federal civil law:

Regarding the subpoena mentioned in your complaint, it is my understanding that under FRCP Rule 26(a), parties have an obligation to automatically disclose specific information and documents to the opposing parties without the necessity of a discovery request. This would encompass all documents, electronically stored information, and tangible items that the disclosing party may use in support of its claims or defenses, and which are within its possession, custody, or control. Would the subpoenas in question not fall under this obligation? You've proposed September 15th for Initial Disclosures. It's worth noting that a separate motion for discovery may not even be necessary, as initial disclosures typically follow shortly after the Rule 26(f) scheduling conference. I trust we can work together to ensure a smooth and timely process. Am I understanding this correctly, or should I research it further?

Thank you again for your assistance and understanding.

Dennis

On Fri, Sep 8, 2023, 7:17 PM phillydee100 <<u>phillydee100@gmail.com</u>> wrote:

Hello Attorney Mills,

I'd like to begin by expressing that ever since the complaint was served to me by MAA and yourself, I have diligently ensured to preserve all pertinent information. My intent with this email is to bring clarity and understanding to the situation. Might I propose that you share some of the specific documents in question? This would allow me to cross-reference and ensure that there hasn't been any oversight or misunderstanding. I'm trying to understand all of this, from song lyrics to Baskin Robbins reviews and supposed vast social media interactions, I'm at a loss.

While with MAA, I operated on multiple computers across different properties. I firmly believe that most, if not all, of the documents or emails I worked on, should still reside with MAA. My departure was rather sudden, leaving little opportunity to tie up all loose ends. From what I remember, I had a conversation with Anwar Brooks in April 2021, and I surmise he would have a record of that. Glenn Russell attempted to communicate with me in the latter part of 2021 through email, and I opted against a phone call. After MAA did not provide me with the findings from my complaints, I preferred not to be contacted further. I assume their whistleblower system would have a log of this.

Following November 2021, my recollections consist of interactions with many individuals and entities, including employees, ex-employees, and contractors, among others, plus emergency notifications associated with MAA's services. As for direct correspondence from MAA, nothing specific stands out. There was an email from Robert Delpriore earlier this year, which, to be honest, felt a bit out in left field. If you've found something specific in this regard, I'd appreciate it if you could point it out, and I'll certainly take a look.

#### Case 2:23-cv-02186-SHL-cgc Document 92-4 Filed 03/06/24 Page 6 of 11 PageID 1519

Given my status as a private individual, I was under the impression that there was no obligation on my part to archive documents that had already been dispatched to agencies such as the EEOC, SEC, DOJ, and IRS. In retrospect, perhaps it might have been prudent to retain some of them, but I presumed that MAA would have the pivotal documents. I'd posit that agencies like the SEC, DOJ, and IRS should have a record of my communications regarding securities and accounting fraud, safety concerns, or dubious business behaviors.

The identity issues I encountered with Capital One and the Virginia Unemployment Commission in 2021 have underscored the importance of online vigilance. This sentiment is only exacerbated by the recent hacking attempts on my email and phone. If the emails in question are vital, maybe a subpoena to Google can provide clarity.

I genuinely wish to address and rectify this situation. Any misunderstandings or unintentional errors from my end are regretted. I'm grateful for your patience, and I am optimistic that we can collaboratively find a resolution. I realize what the judge ruled; thank you for reiterating.

Navigating legal intricacies isn't my forte, and I'm grateful for your understanding. A "reasonable timeframe" typically means a week, so your clarification on the law is valuable. On top of addressing these claims, which I perceive as unfounded, I sought an extension for the scheduling conference to acquaint myself with the legal nuances better. I had previously articulated a preference for communication via USPS in June. Unfortunately, several court notifications have eluded me, and I've been left in the dark about the review status of my motions, with no guidance from the court. Additionally, I'm now apprehensive about visiting places like Springfield Town Center or Alexandria Kohls due to fears of baseless accusations.

Please let me know if something does not make sense. Have a good weekend!

Dennis

# On Fri, Sep 8, 2023 at 5:17 PM Mills, Paige <<u>PMills@bassberry.com</u>> wrote:

Mr. Philipson,

This will acknowledge receipt of your email. Are you are aware that the term "document" includes electronic documents and would encompass any type of electronic file or record that discusses MAA and any of the email addresses set out in the subpoena? And is it your position that you do not have one single electronic document that discusses or relates to MAA? You have send a number of emails to the company, correct? Have you deleted all of those? If so, when? I'm confused as to how you cannot have any electronic documents given the level of your email correspondence with the company and its employees. Please state in writing what has happened to these documents.

Second, I have received your email request for certain documents on September 7, 2023. We will treat this as a set of document requests, despite the fact that they are not formatted as such or appropriately signed given your pro se status. However, as Judge Lipman indicated in her order, on a going forward basis you will need to comply with the Rules. At any rate, under the Federal Rules, we have 30 days to respond to your request and/or provide our objections. Accordingly, your filing with the Court telling her we have not

Document 92-4 Filed 03/0

Filed 03/06/24 Page 7 of 11

PageID 1520

provided them to you in one day is not appropriate as they are not due until October 9, 2023, since the 30<sup>th</sup> day falls on a Saturday.

Sincerely,

Paige Mills

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: phillydee100 <<u>phillydee100@gmail.com</u>> Sent: Friday, September 8, 2023 9:41 AM To: Mills, Paige <<u>PMills@bassberry.com</u>>; Golwen, John S. <<u>jgolwen@bassberry.com</u>>; Thomas, Jordan <<u>jordan.thomas@bassberry.com</u>> Subject: Re: Case Management/ Etc

Good morning,

I was able to locate some documents responsive to your subpoena request regarding MAA. I found them in my file cabinet. There's a reasonable accommodation form from 2019 which was misdated. I had promptly communicated this to Amber Fairbanks and Kristin Ostrom, and the EEOC has this on record.

Additionally, I believe I possess the tracking details for the disk sent to the SEC, IRS, & DOJ. I think this might be of interest. I will inform you once I have them at hand.

Regarding our upcoming call on Monday, I hope for a straightforward and transparent discussion. I value open communication and aim to keep our interactions honest.

Thank you for your patience. I hope you have a good weekend!

Dennis Philipson

On Thu, Sep 7, 2023 at 10:38 PM phillydee100 <<u>phillydee100@gmail.com</u>> wrote:

Good evening everyone,

Having gone over the case management plan, I'm in agreement with the outlined suggestions. However, I'd kindly request an opportunity to review your final version once more prior to its submission to the court. While I am genuinely open to mediation, I must voice my reservations regarding the foundation of, frankly, about 98% of the allegations. It's hard not to view this situation as retaliatory, especially when reflecting on my whistleblower complaints against MAA and Bass, Berry & Sims PLC. A transparent dialogue might be the key to better understanding and possibly aligning our viewpoints.

After we complete the Initial Disclosures by September 15th, I'll propose a deposition date, likely in early October. It's essential for me to fully understand MAA's damage claims and the evidence supporting them. I'm awaiting the documents I've asked for to help our proceedings move smoothly. Additionally, I'm ready to review your second subpoena at a time that works best for you.

I'm preparing for Monday's conference, while I feel somewhat unprepared due to the issues highlighted in my previous motion, I will do my best to keep pace.

Wishing you all a pleasant weekend!

Best,

Dennis Philipson

On Thu, Sep 7, 2023 at 4:17 PM phillydee100 <<u>phillydee100@gmail.com</u>> wrote:

Hello again,

I'll give the proposed plan a thorough review and aim to provide feedback at the earliest. Could I clarify if you plan to provide the documents I've inquired about, especially those related to the concerns raised in your complaint?

I don't have any of the documents you referred to in your subpoena. Anything I had was sent to the SEC, DOJ, and IRS. I'd recommend directing your subpoena towards them. I've made this point clear on multiple occasions. While I await the second subpoena, please be assured I'm ready to review it at your convenience.

I'm not experienced in a court setting, and I find your allegations both demeaning and unfounded.

Document 92-4 PageID 1522 Filed 03/06/24 Page 9 of 11

Wishing you a pleasant day,

Thanks,

Dennis Philipson

On Thu, Sep 7, 2023 at 3:19 PM Mills, Paige <<u>PMills@bassberry.com</u>> wrote:

Mr. Philipson,

I am uncertain as to why you believe our interactions have been hostile. I have tried to maintain a professional demeanor in all my interactions with you and will continue to do so. Attached please find the Plaintiff's responses to your proposed Case Management Order. Please let me know if you are agreeable to these suggestions.

As far as the documents we are seeking, that is set out in Attachment A to the subpoena that we served upon you earlier in the case. I will be serving you with a second set of requests after the case management conference as well. In addition, I look forward to receiving some dates for your deposition, which we can set for a date after we receive your documents.

Best,

Paige Mills

Paige Mills Member

Bass, Berry & Sims PLC 150 Third Avenue South, Suite 2800 • Nashville, TN 37201 Document 92-4 PageID 1523

615-742-7770 phone pmills@bassberry.com • www.bassberry.com

From: phillydee100 <<u>phillydee100@gmail.com</u>> Sent: Thursday, September 7, 2023 10:22 AM To: Mills, Paige <<u>PMills@bassberry.com</u>> Cc: Golwen, John S. <<u>jgolwen@bassberry.com</u>>; Thomas, Jordan <<u>jordan.thomas@bassberry.com</u>> Subject: Case Management/ Etc

Ms. Mills,

I trust you're doing well. I would like to work with you on the proposed plan, aiming for a shared understanding and compliance with the court's rules. Would you be able to modify your plan to include my perspectives?

I believe in maintaining a cordial and cooperative relationship during this process. I consider myself an approachable and amicable person, but I have sensed a level of hostility from our interactions from the very beginning. I am genuinely uncertain about the cause and would like to understand any underlying issues so we can work effectively together.

Given your experience with the court, I'd be grateful if you could relay our discussions to them as necessary.

Additionally, regarding the outstanding document requests, I would appreciate further clarification on the precise details or documents you're seeking from me.

If you could please fulfill my document request as well.

Thank you for your cooperation and understanding.

Best regards,

On Wed, Sep 6, 2023 at 6:33 PM phillydee100 <<u>phillydee100@gmail.com</u>> wrote:

Dear Honorable Judge Lipman and Counsel,

I am writing to submit the attached case management plan from my perspective as the Defendant. Upon careful review, it has become apparent that there are significant discrepancies between my proposed plan and the one put forth by Attorney Mills representing the Plaintiff.

#### Case 2:23-cv-02186-SHL-cgc

#### Document 92-4 Filed 03/06/24 Page 11 of 11 PageID 1524

I have some differences with the Plaintiff's plan, outlined in the attached document. I've formally requested to postpone the scheduling conference via email and USPS, supported by a filed motion. I ask for this delay to prepare more thoroughly for the case and because I prefer in-person meetings over video calls.

Our plan also considers the pending review of the motion to dismiss filed on September 2, 2023 (Docket #33).

Thank you for considering my proposed timelines and conditions, especially given the case's sensitivity and its relevance to whistleblower laws. We look forward to discussing these issues further as the Court deems appropriate.

Best regards,

**Dennis Philipson** 

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

phillydee100

# EXHIBIT E

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#### Add Comment

# EXHIBIT F

Case 2:23-cv-02186-SHL-cgc	Document 92-6 PageID 1528	Filed 03/06/24	Page 2 of 3

From:	Realpage Lawsuit <realpagelawsuit@gmail.com></realpagelawsuit@gmail.com>	
Sent:	Sunday, February 4, 2024 12:51 PM	
To:	Realpage Lawsuit	
Subject:	MAA Code of Conduct 2.2 - 005	



From: Sent: To: Subject: Attachments: Realpage Lawsuit <realpagelawsuit@gmail.com> Sunday, February 4, 2024 12:53 PM realpaglawsuit@gmail.com MFAAN. Com Code of Conduct.pdf

CAUTION: External Email - Only click on contents you know are safe.

MAA Conflict of interest in court system

Case 2:23-cv-02186-SHL-cgc

Document 92-7 Filed 03/06/24 Page 1 of 7 PageID 1530

# **EXHIBIT G**

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

)

MID-AMERICA APARTMENT , COMMUNITIES, INC. Plaintiff, v. DENNIS PHILIPSON

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

Defendant.

### **ORDER OF PERMANENT INJUNCTION**

This matter came before the Court on the Motion of Plaintiff, Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff") for Preliminary Injunction against Defendant Dennis Philipson ("Defendant"); and based upon the Amended Complaint and exhibits thereto, the Motion for Preliminary Injunctive Relief, the Memorandum in Support thereof, the exhibits and Declarations, from all of which the Court finds that MAA has met its burden that:

- there is a likelihood of success on the merits on MAA's claims of defamation, negligence per se, and deceit against Defendant;
- MAA will suffer irreparable harm if Defendant is not enjoined from posting false and defamatory statements concerning MAA, its employees, and its counsel, and from stalking and intimidating MAA, its employees, and counsel;
- the harm suffered by MAA, its employees and counsel in the absence of injunctive relief outweighs any perceived prejudice to Defendant; and
- 4. the public interest is served by granting the injunction.

#### Case 2:23-cv-02186-SHL-cgc Document 92-7 Filed 03/06/24 Page 3 of 7 PageID 1532

The Court further finds that Defendant did not respond to Plaintiff's Motion for Preliminary Injunctive Relief, nor did he respond to the Court's Show Cause Order as to why the injunctive relief should not be granted. (Dkt. 91). Accordingly, the Court finds that Preliminary Injunctive Relief is appropriate. Further, as a sanction for Defendant's failure to comply with the discovery rules and this Court's orders, the Court finds that it is appropriate to make the injunctive relief permanent and final.

It is therefore hereby **ORDERED**, **ADJUDGED AND DECREED** that MAA's Motion for a Preliminary Injunction is GRANTED and the Court ENJOINS Defendant in this action as follows:

- 1. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from creating or setting up any social media account or any other type of account in the name, or a confusingly similar name, of any Mid-America Apartment Communities, Inc., Mid-America Apartments, L.P., any of their respective affiliates, and its and their respective present or past shareholders, directors, officers, managers, partners, employees (other than Defendant), tenants, agents and professional advisors (including but not limited to attorneys, accountants and consultants (collectively, "MAA Persons"), without such individual's or entity's express written permission.
- 2. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from attempting to access or take control of any social media account or any other type of account or device, or to change the login credentials of any account or device, in the name of any MAA Person without such individual's or entity's express written permission.

### Case 2:23-cv-02186-SHL-cgc Document 92-7 Filed 03/06/24 Page 4 of 7 PageID 1533

- 3. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for jobs in the name of any individual MAA Person without the individual's express written permission.
- 4. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for credit cards or any other type of financial instrument or loan in the name of any MAA Person without the individual's or entity's express written permission.
- 5. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from purchasing domain names that contain the MAA trademarks<sup>1</sup> and/or from setting up and/or publishing a website that uses MAA's trademarks in an infringing manner or in a manner that is likely to cause confusion among MAA customers and the apartment rental marketplace.
- 6. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from setting up social media accounts, whether on LinkedIn or otherwise, that falsely purport to be a MAA-sanctioned account or that uses the MAA trademarks in a manner that is infringing or likely to cause confusion among MAA customers and the apartment rental marketplace.
- Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from accessing or attempting to access MAA's computer systems or servers.

<sup>&</sup>lt;sup>1</sup> The MAA trademarks for the purposes of this Injunction are MAA, MID-AMERICA APARTMENT COMMUNITIES, MAA A BRIGHTER VIEW, and MAA COMMUNITIES. The use of a trademark that is confusingly similar to these trademarks is also prohibited by  $\P$  5 of this Injunction.

#### Case 2:23-cv-02186-SHL-cgc Document 92-7 Filed 03/06/24 Page 5 of 7 PageID 1534

- 8. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from contacting any individual MAA Person in-person or by phone, electronic mail, text message, social media, direct message, or any other method, without the express written consent of such person.
- 9. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261a.
- 10. Defendant shall not come within 500 feet of any MAA office, to include parking structures.
- 11. Defendant Philipson, whether under his own name or a false name, and those in active concert with him, are hereby enjoined and prohibited from using, posting, publicizing, disseminating, or distributing statements, including but not limited to e-mails, the leaving of a review on an Internet platform, providing a link to such content, or assisting another in doing same, that state or imply that:
  - MAA's General Counsel, Rob DelPriore has participated in illegal or improper stock transactions;
  - b. it was unethical or improper for Rob DelPriore to have previously been employed at Bass, Berry & Sims;
  - c. there is something improper, illegal, or untoward about the corporate structure of MAA;
  - d. MAA lacks proper or sufficient insurance coverage;
  - e. MAA and its corporate activities have compromised "tenant safety;"
  - f. MAA has inadequate mold and water remediation such that they threaten tenant health and "property integrity";

- g. MAA spends lavishly at the expense of the tenants;
- h. MAA has dangerous policies with regard to residents' pets;
- i. MAA has inadequate grill safety measures;
- j. MAA or its counsel has committed wrongful or improper conduct by attempting to serve a subpoena in this lawsuit.
- 12. For the avoidance of doubt, any statement that would be prohibited by ¶ 11 above that exists as of the issuance of this Order on a website owned or controlled by Defendant (or those in active concert with him) shall be immediately and permanently removed from public view.
- 13. Defendant and those in active concert with him shall be enjoined and barred from possessing, copying, or disseminating any confidential information belonging to MAA to others.
- 14. Any confidential material belonging to MAA in Defendant's possession, custody, or control (or in the possession, custody, or control of those in active concert with him) shall be immediately returned to MAA without any copies being retained.
- 15. Nothing in this Order shall in any way limit Defendant's rights to make whistleblowing complaints or to otherwise communicate with a government agency, as provided for, protected under, or warranted by applicable law.
- 16. This Preliminary Injunction shall be effective as of the date and time set forth below and upon the posting by Plaintiff pursuant to Federal Rule of Civil Procedure 65(c) of a bond in the amount of Five Thousand and 00/100 Dollars (\$5,000.00), which amount this Court finds is appropriate security to pay the costs and damages sustained by any Defendant in the event he were to be wrongfully enjoined or restrained.

Case 2:23-cv-02186-SHL-cgc Document 92-7 Filed 03/06/24 Page 7 of 7 PageID 1536

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_\_, 2024, at \_\_\_\_\_ a.m./p.m.

Judge Sheryl Lipman

Case	2:23-c	v-021	86-SH	L-cqc

Document 94 Filed 03/19/24 PageID 1537

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	:
Plaintiff,	:
V.	:
DENNIS MICHAEL PHILIPSON,	:
Defendant.	:

Case No. 2:23-cv-02186-SHL-cgc

### ORDER DENYING AS MOOT PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS, GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, DENYING DEFENDANT'S REQUEST TO CONTINUE MEDIATION, REQUIRING DEFENDANT TO RESPOND TO MOTION FOR SANCTIONS OF JUDGMENT AND PERMANENT INJUNCTION, AND FINDING DEFENDANT IN CONTEMPT

Before the Court are multiple motions. First is Plaintiff Mid-America Apartment Communities, Inc.'s ("MAA") Motion for Contempt and Sanctions for Failure to Respond to Subpoena (the "Motion for Contempt"), filed June 14, 2023. (ECF No. 19.) In the Motion for Contempt, Mid-America asserts that <u>pro se</u> Defendant Dennis Michael Philipson, a former MAA employee, was served with a subpoena on April 11, 2023, but "failed to respond to the Subpoena or timely file objections to the documents it seeks." (<u>Id.</u> at PageID 276.) MAA contends that this failure warrants holding him in contempt and awarding its attorneys' fees.

Second is MAA's motion for preliminary injunction ("Motion for Preliminary Injunction"), filed January 25, 2024. (ECF No. 81.) The Court set a status conference regarding the motion for Thursday, February 8, 2024. (ECF No. 88.) Mr. Philipson failed to attend the status conference, prompting the Court to enter an Order for Defendant to Show Cause, by February 22, 2024, as to "why he did not appear for the status conference and why the Court

## Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 2 of 22 PageID 1538

should not hold him in contempt." (ECF No. 90 at PageID 1473.) Mr. Philipson did not respond to the Order.

Mr. Philipson also missed his deadline to respond to the Motion for Preliminary Injunction, prompting the Court to enter a second show cause order. (ECF No. 91.) That Order gave Mr. Philipson twenty-one days to demonstrate "whether there is a dispute as to any of the facts in MAA's motion, and to otherwise respond to the motion." (<u>Id.</u> at PageID 1476.) The Court warned Mr. Philipson that if he failed to respond to the "Order, in writing and on the docket by March 5, 2024, the Court will consider the facts in the motion undisputed, will not conduct an evidentiary hearing, and will proceed to evaluate the questions of law at issue in the motion." (<u>Id.</u>) Mr. Philipson never responded to that Order or otherwise respond to the motion for preliminary injunction.

The final motion is MAA's Motion for Sanctions of Judgment and Permanent Injunction Against Philipson ("Motion for Permanent Injunction"), filed March 6, 2024. (ECF No. 92.) That motion seeks default judgment against Mr. Philipson, a permanent injunction and damages.<sup>1</sup>

For the following reasons, MAA's Motion for Contempt and Sanctions for Failure to Respond to Subpoena is **DENIED AS MOOT** and its motion for preliminary injunction is **GRANTED IN PART AND DENIED IN PART**, consistent with the terms described in this Order. The Court also **FINDS MR. PHILIPSON IN CONTEMPT** based on his repeated

<sup>&</sup>lt;sup>1</sup> Local Rule 7.2(a) requires responses to most types of motions, including motions for permanent injunctions, within fourteen days. An additional three days are added when service is conducted by mail (see Fed. R. Civ. P. 6(d)), and, if the response is due on a Sunday, the deadline extends to the next day (see Fed. R. Civ. P. 6(a)(2)(C)). MAA filed its Motion for Permanent Injunction on March 6, 2024. Under the applicable rules, Mr. Philipson's response is due March 25, 2024.

flouting of this Court's Orders and rules, and sets a hearing on that finding, as is explained in more detail below.

Finally, Mr. Philipson is also **DIRECTED** to respond to the Motion for Permanent Injunction by his deadline to do so. If Mr. Philipson fails to timely respond by his deadline, the Court will consider the motion undisputed and will rule accordingly.

#### BACKGROUND

MAA originally filed its lawsuit against unnamed Defendants John Does #1-2 on April 3, 2023, alleging claims under the Lanham Act, 15 U.S.C. § 1051 <u>et seq.</u>, the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), common law infringement and unfair competition and the Tennessee Consumer Protection Act, Tennessee Code Annotated § 47-18-104 <u>et seq.</u> (ECF No. 1 at PageID 1.) On April 11, 2023, MAA served Mr. Philipson with a subpoena to produce six categories of documents. (See ECF Nos. 19 & 19-1.) Mr. Philipson filed a motion to quash the subpoena on April 17, 2023. (ECF No. 10.)<sup>2</sup> The Court entered an order on May 16, 2023, denying the motion to quash. (ECF No. 15.)

On June 13, MAA filed its Amended Complaint, which replaced the John Doe Defendants with Mr. Philipson. (ECF No. 16.)<sup>3</sup> The Amended Complaint alleges that Mr. Philipson, following his resignation from MAA, engaged in a variety of tortious activities, mostly online, as part of a "long and relentless vendetta against MAA." (ECF No. 16 at PageID 177.) The claims in the Amended Complaint include those set forth in the original complaint, as well as additional claims for, among other things, unfair competition, misappropriation,

 $<sup>^2</sup>$  Mr. Philipson's motion to quash was also filed in the miscellaneous case 2:23-mc-00015-SHL-atc.

<sup>&</sup>lt;sup>3</sup> A summons was issued the day the Amended Complaint was filed (ECF No. 18), and Mr. Philipson was served the next day (ECF No. 20).

## Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 4 of 22 PageID 1540

deceptive trade practices, fraudulent misrepresentations, defamation, tortious interference with prospective business relationships, deceit, negligence <u>per se</u> related to acts of cyber harassment, and claims under the Tennessee Personal and Commercial Computer Act of 2003. (See id.)

The next day, MAA filed the Motion for Contempt related to the Rule 45 subpoena for documents, seeking a contempt finding against Mr. Philipson, as well as an award of attorneys' fees as a sanction under Federal Rule of Civil Procedure 37(a)(5)(A). (ECF No. 19.) Mr. Philipson also did not respond to the Motion for Contempt, prompting the Court to enter an Order to Show Cause on July 10, 2023. (ECF No. 21.) Mr. Philipson responded to that Order on July 31, 2023. (ECF No. 22.) His response provided background information as to his previous interactions with MAA and asserted that the case should be dismissed. (<u>Id.</u> at PageID 299.) Only a portion of his filing responded to the Motion for Contempt; Mr. Philipson appeared to assert that he misplaced a thumb drive containing materials that might have been responsive to the subpoena. (<u>Id.</u>)

The Court addressed the Motion for Contempt with the Parties at the September 11, 2023 scheduling conference. (ECF No. 45.) Then, on October 4, 2023, the Court entered an Order Requiring the Plaintiff to File Notice in which it directed MAA to clarify what, if any, issues remained outstanding regarding the Motion for Contempt. (ECF No. 57.)

Philipson filed a notice the next day in which he asserted that he "conducted a thorough review of all documents and emails in my possession to find anything responsive to Mid-America's subpoena" and the only potentially relevant material was a screenshot from the LinkedIn page of Robert Delpriore, counsel for MAA." (ECF No. 58 at PageID 579.) He declared that he has "no additional documents in my possession that are responsive to the subpoena." (Id.)

### Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 5 of 22 PageID 1541

MAA filed a notice on October 11, 2023, standing by its Motion for Contempt. (ECF No. 62.) MAA asserts that, "despite [Mr. Philipson's] representations and having nearly six months to do so, Mr. Philipson has failed to produce responsive documents and thus is in contempt of this Court's subpoena." (Id. at PageID 596.) MAA "requests that this Court find that Defendant is in contempt of the subpoena, order him to comply with it, and award Plaintiff its reasonable attorney fees for bringing the instant motion." (Id.)

On November 8, 2023, the Court entered an Order referring the matter to Chief Magistrate Judge Tu M. Pham for mediation. (ECF No. 71.) Judge Pham held a status conference on November 14, 2023, which Mr. Philipson failed to attend, and then held the mediation on November 29, 2023, which Mr. Philipson also did not attend. (ECF Nos. 72 & 74.) Three days later, Mr. Philipson filed a request seeking to continue the mediation, explaining that he "inadvertently missed a mediation session" and "respectfully request[ed] that any mediation be deferred until early February." (ECF No. 75 at PageID 753.)<sup>4</sup> The next day, December 3, 2023, Mr. Philipson filed a motion and amended motion for reasonable accommodations. (ECF Nos. 76 & 77.) MAA opposed the motion. (ECF No. 79.)<sup>5</sup>

MAA's Motion for Preliminary Injunction—whose facts are now undisputed as set forth below—outlines the myriad activities Mr. Philipson has engaged in that warrant the extraordinary relief that it seeks. The behaviors include, among other things, publishing

<sup>&</sup>lt;sup>4</sup> Mr. Philipson's request is not well taken and is **DENIED**. Mr. Philipson's request for continuation fails to justify his repeated waste of judicial resources, does not sufficiently explain his absence from either event and, given his behavior to this point in the litigation, the Court is not convinced that Mr. Philipson would attend another mediation if one were set.

<sup>&</sup>lt;sup>5</sup> Both of those motions were sealed after they were submitted, per an email request from Mr. Philipson, in which he also asserted that "ADA laws may not apply to federal courts" and "kindly request[ed] that you forward this request to the appropriate person responsible for assisting with accommodation requests within the Tennessee court system." The Court did not take any further action with Mr. Philipson's request, and considers the motions withdrawn.

## Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 6 of 22 PageID 1542

defamatory and fraudulent and deceitful materials about it and its employees via mass emails and elsewhere, electronically stalking them, and applying for credit cards in the names of MAA's counsel. For instance, in early January 2024, Mr. Philipson sent multiple emails to thousands of people that contained misrepresentations and innuendo about MAA. (See ECF Nos. 83-1, 83-2, 83-3.)<sup>6</sup> Mr. Philipson also left numerous bizarre Google reviews of businesses located near MAA's headquarters and the homes of its employees, which included references to personal information about those employees "that was not generally known and indicated to them that Philipson was listening in on conversations, possibly reading their mail and emails, and stalking them, either via the computer or in person." (ECF No. 82 at PageID 906.)

#### **ANALYSIS**

#### I. Motion for Contempt

MAA issued a subpoena to Mr. Philipson pursuant to Federal Rule of Civil Procedure 45 before he was a named party in this action. Rule 45 governs subpoenas and allows a party to command a nonparty to produce documents or tangible things. Fed. R. Civ. P. 45(a)(1). Under the Rule, the court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." Fed. R. Civ. P. 45(g). Ultimately, Rule 45(g) provides "[t]he only authority in the Federal Rules of Civil Procedure for the imposition of sanctions against a nonparty for failure to comply with a subpoena duces tecum." <u>Weems v. Omni Hotels Mgmt. Corp.</u>, No. 3:21-CV-00293, 2022 WL 989144, at \*1 (M.D. Tenn. Mar. 31, 2022).

<sup>&</sup>lt;sup>6</sup> Separately, one of MAA's attorneys was signed up for MAA's investor email alert, without her permission or request, which MAA asserts was done by Mr. Philipson. (ECF No. 82 at PageID 911.) One of the Court's law clerks has also been signed up for MAA's investor email alert without his permission or request.

# Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 7 of 22 PageID 1543

Whereas Rule 45 governs the issuance of subpoenas to non-parties, "[t]he Rules anticipate that production of documents and things from parties will be accomplished through Rule 34." <u>Elvis Presley Enters., Inc. v. City of Memphis, Tenn.</u>, No. 2:18-cv-02718-SHM-atc, 2020 WL 4015476, at \*12 (W.D. Tenn. July 16, 2020). <u>See also Reynolds & Reynolds Co., Inc.</u> <u>v. Alan Vines Auto. of Jackson, LLC</u>, No. 1:20-mc-0003-STA, 2020 WL 5797923, at \*7 (W.D. Tenn. Sept. 28, 2020) ("Generally speaking, a party can serve non-parties with requests for production by subpoena under Rule 45, and not through a Rule 34 request propounded on an actual party to the action.") (citations omitted).

The unusual procedural circumstances at play when MAA filed its Motion for Contempt must be considered in evaluating the motion. At the time MAA issued its subpoena to Mr. Philipson in April 2023, the Defendants were listed as John Doe 1 and 2. (See ECF Nos. 1 & 19-1.) MAA filed its amended complaint on June 13, 2023, naming Mr. Philipson as the lone Defendant. (ECF No. 16.) Had Mr. Philipson been a party to the case at the time MAA issued its subpoena, it is likely that MAA would have sought the documents under the discovery mechanisms applicable to parties. See e.g., Fed. R. Civ. P. 31–36.<sup>7</sup> In fact, in its Motion for

<sup>&</sup>lt;sup>7</sup> Courts and legal scholars are split on whether Rule 45 subpoenas can be issued to parties to a case. <u>See, e.g., Olmstead v. Fentress Cnty., Tenn.</u>, No. 2:16-CV-00046, 2018 WL 6198428, at \*3 (M.D. Tenn. Nov. 28, 2018) (collecting cases to illustrate that the majority view is that Rule 45 can be used against parties and non-parties); <u>Baggett v. Schwan's Home Serv.</u>, <u>Inc.</u>, No. 3:04-CV-316, 2005 WL 8162577, at \*1 (E.D. Tenn. Oct. 31, 2005) (assuming, without deciding, that a Rule 45 subpoena could be served on a party, but noting that even "two of the leading treatises on federal civil procedure hold different views on the issue," citing Moore's <u>Federal Practice</u> and Wright & Miller's <u>Federal Practice and Procedure</u>).

Courts that find Rule 45 appropriate for use against parties to a case typically do so with the caveat that the rule cannot be used to circumvent the discovery deadlines otherwise in place, as "[s]ubpoenas issued under Rule 45 are a discovery device subject to the same deadlines as other forms of discovery, including deadlines in a court's scheduling order." <u>Elvis Presley</u> <u>Enters., Inc. v. City of Memphis, Tenn.</u>, No. 2:18-cv-02718-SHM-dkv, 2020 WL 4015476, at \*12 (W.D. Tenn. July 16, 2020). The scheduling order deadlines are not implicated here.

## Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 8 of 22 PageID 1544

Permanent Injunction, MAA attached the first set of document requests it propounded upon Mr. Philipson on September 15, 2023 (ECF No. 92-3), which contained a significant amount of overlap with the document requests included in its earlier subpoena (see ECF No. 19-1), and MAA also indicated it submitted a second set of document requests upon Mr. Philipson on October 16, 2023 (ECF No. 92 at PageID 1479), which might have contained additional redundancies.

The Court is dubious that Mr. Philipson has produced all of the documents that might be responsive to the subpoena. However, given the circumstances here, which include the fact that Mr. Philipson became a party to the case after having received the subpoena, the overlapping nature of materials MAA sought through the subpoena and the document requests, the fact that a finding of contempt is the lone sanction available under Rule 45, as well as the fact that MAA can—and has sought—additional sanctions against Mr. Philipson for his failure to respond to the discovery requests propounded upon him after he became a party to this case in its Motion for Permanent Injunction, the Court **DENIES AS MOOT** MAA's Motion for Contempt. This ruling in no way excuses Mr. Philipson's failure to provide documents responsive to the subpoena to the extent that he had or has responsive documents, and makes no determination as to whether, or what, judgment or sanctions Mr. Philipson is also **ORDERED**, consistent with his

<sup>&</sup>lt;sup>8</sup> Mr. Philipson informed MAA's counsel that, "ever since the complaint was served to me by MAA" he "diligently ensured to preserve all pertinent information." (ECF No. 62-4 at PageID 613.) But it may be problematic if Mr. Philipson did not diligently preserve all pertinent information even <u>prior</u> to being served with the complaint. After all, Mr. Philipson was served with the subpoena on April 11, 2023, and, "[a]s a general matter, it is beyond question that a party to civil litigation has a duty to preserve relevant information, including ESI, when that party 'has notice that the evidence is relevant to litigation or . . . should have known that the evidence may be relevant to future litigation." John B. v. Goetz, 531 F.3d 448, 459 (6th Cir. 2008) (quoting <u>Fujitsu Ltd. v. Fed. Express Corp.</u>, 247 F.3d 423, 436 (2d Cir. 2001)). Mr.

obligations under Local Rule 7.2(a)(2), to respond to MAA's Motion for Permanent Injunction by the March 25, 2024 deadline.

### **II.** Motion for Preliminary Injunction

Based on a number of claims, MAA also seeks a preliminary injunction. There are four factors the Court must balance when determining whether a plaintiff is entitled to a preliminary injunction: "(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant has shown that he or she would suffer irreparable harm if the preliminary relief is not issued; (3) whether the issuance of a preliminary injunction will cause substantial harm to third parties; and (4) whether the public interest would be served by the issuance of a preliminary injunction. <u>G.S. by & through Schwaigert v. Lee</u>, 560 F. Supp. 3d 1113, 1121 (W.D. Tenn. 2021) (citing <u>Sandison v. Mich. High Sch. Athletic Ass'n</u>, 64 F.3d 1026, 1030 (6th Cir. 1995)). The Court is not required to explicitly consider each of these factors if one is dispositive. <u>Robinson v. Tansley</u>, No. 2:23-cv-02589-SHL-atc, 2023 WL 6613099, at \*2 (W.D. Tenn. Oct. 10, 2023) (quoting <u>Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.</u>, 511 F.3d 535, 542 (6th Cir. 2007)).

MAA asserts in its Motion for Preliminary Injunction that "[t]he Court's immediate protection is necessary because Defendant's harassment, defamation, and deceit have been ongoing but now are sharply escalating." (ECF No. 82 at PageID 902.) According to MAA, Mr. Philipson has "taken steps to destroy MAA and its relationships with its employees and the

Philipson, though not yet a party to the lawsuit, was on notice that the evidence he had may be relevant to future litigation at least as of April 11, 2023, if not sooner. See In re Black Diamond Min. Co., LLC, 514 B.R. 230, 237 (E.D. Ky. 2014) (noting that an obligation to preserve evidence arises "when a party should have known that the evidence may be relevant to future litigation," which "can, and often does, happen earlier than when the actual lawsuit is filed.") (Thapar, J.) (citations omitted).

## Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 10 of 22 PageID 1546

community," and his "continuing and escalating stalking and cyber-harassment indicate a dangerous individual and MAA, its employees, and counsel seek protection from him." (<u>Id.</u>) To that end, MAA asserts that, "it has a likelihood of success on the merits of its claims for negligence <u>per se</u> for Philipson's repeated violations of the federal law that prohibits stalking (18 U.S.C. §§ 2261a), for common law deceit, and for defamation." (ECF No. 81 at PageID 890–91.)

Mr. Philipson failed to respond to the Motion for Preliminary Injunction, prompting the Court to issue its February 13 Order to Show Cause, warning Mr. Philipson that, absent a response, the facts as alleged in the motion would be deemed undisputed, leaving the Court to conduct a legal analysis of the claims therein. It does so now, evaluating the motion under the relevant four factors.

#### A. Substantial Likelihood of Success on the Merits

MAA asserts that it is likely to succeed on the merits of its claims for negligence <u>per se</u>, deceit and defamation, based on Mr. Philipson's use of false and defamatory information in violation of the federal crime of cyberstalking, as well as his distribution of defamatory emails. (ECF No. 82 at PageID 915.) Each claim is considered below.

#### 1. Negligence <u>Per Se</u>

MAA's claim for negligence <u>per se</u> is tied to its allegations that Mr. Philipson engaged in cyber harassment in violation of 18 U.S.C. § 2261A. (<u>Id.</u> at PageID 915–19.) That criminal statute prohibits the use of "any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that . . . places that person in

# Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 11 of 22 PageID 1547

reasonable fear of the death of or serious bodily injury to a person," their immediate family member or their spouse or intimate partner. § 2261A(2)(A).<sup>9</sup>

Under Tennessee law, negligence <u>per se</u> is not a stand-alone cause of action, but instead "is a form of ordinary negligence that enables the courts to use a penal statute to define a reasonably prudent person's standard of care." <u>Rains v. Bend of the River</u>, 124 S.W.3d 580, 589 (Tenn. Ct. App. 2003) (citations omitted). The doctrine of negligence <u>per se</u> does not "automatically create[] a private negligence cause of action for the violation of every statute," and "arises when a legislative body pronounces in a penal statute what the conduct of a reasonable person must be, whether or not the common law would require similar conduct." <u>Id.</u> (citations omitted). "Plaintiffs in negligence per se cases must still establish causation in fact, legal cause, and damages." <u>Id.</u> (citations omitted).

MAA alleges that Mr. Philipson is liable for negligence <u>per se</u> for a variety of actions, including "stalk[ing] MAA employees by visiting and leaving dozens of creepy and strange reviews via the internet on establishments near their homes, including locations where the employee's children stay after school or visit frequently." (ECF No. 82 at PageID 916.) Those reviews contained references to information that Mr. Philipson "had no legitimate basis for knowing, other than by impermissibly stalking, following, or shadowing" those employees. (<u>Id.</u>) Mr. Philipson also set up social media accounts for MAA employees without their permission and used a computing device and the Internet to, among other things: attempt to breach MAA's

<sup>&</sup>lt;sup>9</sup> On its own, § 2261A does not create a private right of action. <u>See Hopson v.</u> <u>Commonwealth Att'ys Off.</u>, No. 3:12-CV-744-M, 2013 WL 1411234, at \*3 (W.D. Ky. Apr. 8, 2013) (collecting cases standing for the proposition that "[i]t is clear that § 2261A does not provide for a private cause of action or civil remedies").

# Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 12 of 22 PageID 1548

systems, apply for credit cards in the names of one of MAA's attorneys and her husband, set up a website that infringed on MAA's intellectual property and create fake LinkedIn accounts to spread false and defamatory information about MAA and to confuse its customers and employees. (Id.)

MAA has demonstrated that it is likely to be able to show that Mr. Philipson's actions were the cause in fact and legal cause of the damages it and its employees sustained. His stalking has caused emotional harm to MAA's employees (see, e.g., Decl. of Jay Blackman (ECF No. 84)), and has caused MAA to incur significant costs, including having to purchase credit monitoring services for its employees and outside counsel, employing cyberstalking experts to trace Mr. Philipson activities, and incurring significant attorneys' fees to address Mr. Philipson's trademark infringement (ECF No. 82 at PageID 919). Moreover, MAA has demonstrated that, absent the extraordinary relief it seeks here, it, its employees and its counsel will continue to experience fear, intimidation, reputational damage and substantial emotional distress. Its likelihood of success on the merits of its negligence per se claim related to Mr. Philipson's violation of the federal cyberstalking laws is clear.

#### 2. Common Law Deceit

Traditionally, Tennessee law defined common law fraud and deceit as follows:

When a party intentionally misrepresents a material fact or produces a false impression in order to mislead another or to obtain an undue advantage over him, there is a positive fraud. The representation must have been made with knowledge of its falsity and with a fraudulent intent. The representation must have been to an existing fact which is material and the plaintiff must have reasonably relied upon that representation to his injury.

<u>First Nat'l Bank of Louisville v. Brooks Farms</u>, 821 S.W.2d 925, 927 (Tenn. 1991.) Today, the "common-law claim for intentional misrepresentation is the successor to the common-law action for deceit." <u>Hodge v. Craig</u>, 382 S.W.3d 325, 342 (Tenn. 2012) (citing <u>First Nat'l Bank of</u>

Louisville, 821 S.W.2d at 927). The elements of intentional misrepresentation are similar to common law deceit and include the following:

(1) that the defendant made a representation of a present or past fact; (2) that the representation was false when it was made; (3) that the representation involved a material fact; (4) that the defendant either knew that the representation was false or did not believe it to be true or that the defendant made the representation recklessly without knowing whether it was true or false; (5) that the plaintiff did not know that the representation; and (6) that the plaintiff sustained damages as a result of the representation.

Hodge, 382 S.W.3d at 343.

Here, MAA asserts that Mr. Philipson is liable for common law deceit based on his purchase of an internet domain, falsely representing himself as "Piper and Savage," and emailing more than 1,200 MAA employees with false and defamatory information that produced an untold number of false impressions. (ECF No. 82 at PageID 920–21.) MAA asserts that Mr. Philipson made the representations with fraudulent intent and that "there is imminent danger" that the employees who have received these emails "will rely on these statements, causing them to leave or lose confidence in the company, which can be devastating to MAA's reputation and employee relationships." (Id. at 921.)

What MAA has failed to demonstrate, however, is that it relied upon the false representations to its detriment, a necessary element of its common-law fraud and deceit claim. Its employees might have relied upon the misrepresentations, and their reliance on those misrepresentations might damage the goodwill MAA enjoys. But that sort of damage is not the sort contemplated by a claim for deceit. As a result, MAA is unlikely to prevail on the merits of its claims for common-law deceit, and its Motion for Preliminary Injunction is denied as to this claim.<sup>10</sup>

### 3. Defamation

Establishing a <u>prima facie</u> case of defamation under Tennessee law requires MAA to show that Mr. Philipson "published a statement; with knowledge that the statement is false and defaming to the other; or with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement." <u>Seaton v. TripAdvisor LLC</u>, 728 F.3d 592, 596–97 (6th Cir. 2013) (quoting <u>Sullivan v. Baptist Mem'l Hosp.</u>, 995 S.W.2d 569, 571 (Tenn. 1999)).

MAA asserts that multiple emails Mr. Philipson sent in early January 2024 included a series of misrepresentations and innuendo regarding MAA, its employees, and current and former employees of Bass, Berry & Sims, MAA's counsel in the case, satisfying each of the <u>prima facie</u> elements of defamation. (ECF No. 82 at PageID 921–22.) To the extent that those statements might be true, they are otherwise actionable because they imply facts that are not true, according to MAA. (<u>Id.</u> at PageID 922–23.)

Among other things, Mr. Philipson's emails falsely imply that MAA principals engaged in insider trading, committed securities fraud, antitrust violations, business fraud and safety violations, that its lease policies were linked to the death of one of its tenants, that he had a team prepared to offer additional information related to those and other allegations, that it lacked insurance coverage, that its mold and water remediation policies were insufficient, that it had insufficient safety measures and that its corporate structure was unlawful. (See ECF Nos. 83-1

<sup>&</sup>lt;sup>10</sup> The Court has not identified any activities that MAA seeks to enjoin Mr. Philipson from engaging in that are tied exclusively to its claim for common-law deceit.

# Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 15 of 22 PageID 1551

& 83-2.) MAA declares that all of these statements are false and, given the Court's determination that MAA's factual assertions in its Motion for Preliminary Injunction have been deemed admitted, it is beyond cavil that the statements contained therein are defamatory. For the purposes of ruling on the Motion for Preliminary Injunction, the Court finds that Mr. Philipson published the false statements contained within the emails, that he had knowledge of their falsity and defamatory nature to MAA, or, at the very least, recklessly disregarded the truth of the statement or negligently failed to ascertain the truth of the statements contained in the emails.

MAA is likely to succeed on the merits of its defamation claim.<sup>11</sup>

### **B.** Irreparable Harms Shown

When determining whether to issue a preliminary injunction, the irreparable harm "factor is indispensable," as, "[i]f the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief now as opposed to at the end of the lawsuit." <u>D.T. v. Sumner Cnty. Sch.</u>, 942 F.3d 324, 327 (6th Cir. 2019) (citation omitted). A plaintiff's harm from the denial of a preliminary injunction is irreparable if it is not fully compensable by monetary damages. <u>Overstreet v. Lexington-Fayette Urb. Cnty. Gov't</u>, 305 F.3d 566, 578 (6th Cir. 2002) (citing <u>Basicomputer Corp. v. Scott</u>, 973 F.2d 507, 511 (6th Cir. 1992)). At the same time, "an injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate." <u>Basicomputer Corp.</u>, 973 F.2d at 511.

<sup>&</sup>lt;sup>11</sup> As MAA points out, narrow injunctions against false and defamatory speech are permissible without contravening the First Amendment's general prohibition on prior restraints. <u>See, e.g., In re Conservatorship of Turner</u>, No. M2013-01665-COA-R3CV, 2014 WL 1901115, at \*20 (Tenn. Ct. App. May 9, 2014) (adopting the "modern rule" and holding "that defamatory speech may be enjoined after a determination that the speech is, in fact, false," explaining that, "because defamatory speech is not protected by the First Amendment, such an injunction does not violate the amendment's guarantee of free speech").

## Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 16 of 22 PageID 1552

Some, but not all, of the harms MAA seeks redress for are compensable by monetary damages. However, the reputational harm and the interference with customer relationships that MAA has suffered and will potentially continue to suffer in the absence of a preliminary injunction are difficult to quantify, and thus warrant the relief MAA seeks. <u>See ACT, Inc. v.</u> <u>Worldwide Interactive Network, Inc.</u>, 46 F.4th 489, 503–04 (6th Cir. 2022) ("[I]nterference with customer relationships and damage to reputation are precisely the sorts of injuries this circuit has said are difficult to quantify monetarily, and thus constitute irreparable harm.") (citations omitted). The fear and intimidation Mr. Philipson has wreaked through his online antics also represent the sort of difficult to quantify damages that constitute irreparable harm, warranting a preliminary injunction. This factor weighs in favor of granting MAA's Motion for Preliminary Injunction.

### C. No Substantial Harm to Third Parties

Evaluating the third factor "requires a court to balance the harm a plaintiff would suffer if its request for a preliminary injunction was denied with the harm the defendants would suffer if they were to be preliminarily enjoined. It also requires a court to assess the impact a preliminary injunction might have on relevant third parties." <u>Corp. Exp. Off. Prod. v. Warren</u>, No. 01-2521 DBRE, 2002 WL 1901902, at \*27 (W.D. Tenn. May 24, 2002).

Any harm Mr. Philipson may sustain as a result of the issuance of a preliminary injunction that prevents him from engaging in the sort of activities he has been engaged in would be outweighed by the ongoing harms MAA would suffer if the injunction were denied. Moreover, the preliminary injunction will not result in harm to third parties. In fact, prohibiting Mr. Philipson from disseminating defamatory information about MAA would likely help third parties and the public, and not harm them. <u>See e.g.</u>, <u>Davenport v. Wash. Educ. Ass'n</u>, 551 U.S.

177, 188 (2007) (finding that "speech that is . . . defamatory can be constitutionally proscribed because the social interest in order and morality outweighs the negligible contribution of those categories of speech to the marketplace of ideas"). This factor also weighs in favor of issuing a preliminary injunction.

### D. Injunctive Relief Serves the Public Interest

Finally, issuing the injunction MAA seeks will also serve the public interest. As MAA points out, "[t]he public interest is always served by enhancing public safety." (ECF No. 82 at PageID 925.) The public, which includes MAA, its employees, its counsel, and others, have a right to be protected from Mr. Philipson's stalking and defamation. The final factor weighs in favor of granting MAA's Motion for Preliminary Injunction.

Because all four factors weigh in favor of granting MAA's Motion for Preliminary Injunction, the motion is **GRANTED** as to its claims for negligence <u>per se</u> and defamation, but **DENIED** as to its claim for deceit.

#### E. Security

Under the Federal Rules, "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). However, "[w]hile this language appears to be mandatory, 'the rule in our circuit has long been that the district court possesses discretion over <u>whether</u> to require the posting of security." <u>Appalachian Reg'l Healthcare, Inc. v. Coventry Health & Life Ins. Co.</u>, 714 F.3d 424, 431 (6th Cir. 2013) (quoting <u>Moltan Co. v. Eagle–Picher Indus., Inc.</u>, 55 F.3d 1171, 1176 (6th Cir. 1995)). Here, given MAA's strong likelihood of success on the merits, as well as the fact that Mr.

Philipson will incur little, if any, harm upon the entry of the preliminary injunction, MAA shall not be required to post a bond.

### IT IS THEREFORE ORDERED THAT:

- 1. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from creating or setting up any social media account or any other type of account in the name, or a confusingly similar name, of any Mid-America Apartment Communities, Inc., Mid-America Apartments, L.P., any of their respective affiliates, and its and their respective present or past shareholders, directors, officers, managers, partners, employees (other than Defendant), agents and professional advisors (including but not limited to attorneys, accountants and consultants (collectively, "MAA Persons"), without such individual's or entity's express written permission.
- 2. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from attempting to access or take control of any social media account or any other type of account or device, or to change the login credentials of any account or device, in the name of any MAA Person without such individual's or entity's express written permission.
- 3. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for jobs in the name of any individual MAA Person without the individual's express written permission.
- 4. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for credit cards or any other type of

# Case 2:23-cv-02186-SHL-cgc Document 94 Filed 03/19/24 Page 19 of 22 PageID 1555

financial instrument or loan in the name of any MAA Person without the individual's or entity's express written permission.

- 5. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from purchasing domain names that contain the MAA trademarks and/or from setting up and/or publishing a website that uses MAA's trademarks in an infringing manner or in a manner that is likely to cause confusion among MAA customers and the apartment rental marketplace.
- 6. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from setting up social media accounts, whether on LinkedIn or otherwise, that falsely purport to be a MAA-sanctioned account or that use the MAA trademarks in a manner that is infringing or likely to cause confusion among MAA customers and the apartment rental marketplace.
- Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from accessing or attempting to access MAA's computer systems or servers.
- 8. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from contacting any individual MAA Person inperson or by phone, electronic mail, text message, social media, direct message, or any other method, without the express written consent of such person.
- 9. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261A.

- Defendant shall not come within 500 feet of any MAA office, to include parking structures.
- 11. Other than as noted in Paragraph 12 below, Defendant Philipson, whether under his own name or a false name, and those in active concert with him, are hereby enjoined and prohibited from using, posting, publicizing, disseminating, or distributing statements, including but not limited to e-mails, the leaving of a review on an internet platform, or assisting another in doing same, that state or imply that:

a. MAA's General Counsel, Rob DelPriore has participated in illegal or improper stock transactions;

b. That it was unethical or improper for Rob DelPriore to have previously been employed at Bass, Berry & Sims;

c. there is something improper, illegal, or untoward about the corporate structure of MAA;

d. that MAA lacks proper insurance coverage;

e. that MAA and its corporate activities have compromised "tenant safety;"

f. that MAA has inadequate mold and water remediation such that they threaten tenant health and "property integrity";

g. that MAA spends lavishly at the expense of the tenants;

h. that MAA has dangerous policies with regard to residents' pets;

i. that MAA has inadequate grill safety measures;

j. that MAA or its counsel has committed wrongful or improper conduct by attempting to serve a subpoena in his lawsuit.

- 12. Nothing in this Order shall in any way limit Defendant's right to make whistleblowing complaints or to otherwise communicate with a government agency, as provided for, protected under, or warranted by applicable law.
- 13. This Preliminary Injunction shall remain in effect until a final order is entered in this case unless dissolved sooner by order of this Court.

#### **III.** Contempt of Court

Finally, the Court warned Mr. Philipson that his failure to respond to the Court's orders would result in a finding that he was in contempt. (See ECF No. 90 at PageID 1473.) Mr. Philipson has failed to respond to multiple orders to show cause and failed to attend multiple hearings set before this Court, as well as the Court-ordered judicial mediation. Given this ongoing obstreperous behavior, the Court is left no choice and hereby **FINDS MR**.

### PHILIPSON IN CONTEMPT.

A hearing addressing Mr. Philipson's purging of his contempt will be held at 10:00 a.m. on Monday, April 15, 2024, in Courtroom 1. If Mr. Philipson fails to appear as directed, the Court shall take all necessary action to bring him before the Court, including but not limited to issuing a warrant for his arrest and directing that he be held in custody pending a hearing on this matter.

### **CONCLUSION**

For the reasons stated above, the Court **DENIES AS MOOT** MAA's Motion for Contempt and Sanctions; **GRANTS IN PART AND DENIES IN PART** MAA's Motion for Preliminary Injunction; **DENIES** Mr. Philipson's request to continue the mediation; **FINDS** Mr. Philipson in Contempt; and **SETS A HEARING** regarding Mr. Philipson's Contempt for 10:00

a.m. on Monday, April 15, 2024, in Courtroom 1.

IT IS SO ORDERED, this 19th day of March, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE Document 95 Filed 03/19/24

1559

PageID

**UNITED STATES DISTRICT COURT** WESTERN DISTRICT OF TENNESSEE Western Division Office of the Clerk

Wendy R. Oliver, Clerk 242 Federal Building 167 N. Main Street Memphis, Tennessee 38103 (901) 495-1200

Deputy-in-Charge U.S. Courthouse, Room 262 111 South Highland Avenue Jackson, Tennessee 38301 (731) 421-9200

### **NOTICE OF SETTING** Before Judge Sheryl H. Lipman, United States District Judge

March 19, 2024

RE: 2:23-CV-02186-SHL-cgc Mid-America Apartment Communities, Inc. v. John Doe-1, John Doe-2, and **Dennis** Philipson

Dear Sir/Madam:

A CONTEMPT HEARING before Judge Sheryl H. Lipman has been SET for MONDAY, APRIL 15, 2024 at 10:00 A.M. in Courtroom 1, 11th floor of the Federal Building, Memphis, Tennessee.

If you have any questions, please contact the case manager at the telephone number or email address provided below.

> Sincerely, WENDY R. OLIVER, CLERK s/Jairo Mendez, BY: Case Manager 901-495-1217 jairo mendez@tnwd.uscourts.gov

Case	2:23	-CV-	0218	36-S⊦	IL-cç	JC
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Document 97 Filed 05/06/24 Page 1 of 18 PageID 1560

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
ν.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

### ORDER GRANTING MOTION FOR SANCTIONS OF JUDGMENT AND GRANTING IN PART MOTION FOR PERMANENT INJUNCTION

Before the Court is Plaintiff Mid-America Apartment Communities, Inc.'s ("MAA") Motion for Sanctions of Judgment and Permanent Injunction Against Philipson (the "Motion for Judgment"), filed March 6, 2024. (ECF No. 92.) <u>Pro se</u> Defendant Dennis Michael Philipson did not respond to the motion and his time to do so has passed.

Mr. Philipson has made a habit of failing to respond to Plaintiff's motions and numerous Court orders in this case, and has failed to attend multiple hearings, both in-person and virtual. Most recently, Mr. Philipson failed to attend the April 15, 2024 hearing the Court set to give him the opportunity to purge its finding that he was in contempt. (ECF No. 96.) In the Order finding him in contempt, the Court warned him that if he "fails to appear as directed, the Court shall take all necessary action to bring him before the Court, including but not limited to issuing a warrant for his arrest and directing that he be held in custody pending a hearing on this matter." (ECF No. 94 at PageID 1557.) At the contempt hearing, the Court explained that it would not, at this point, issue an arrest warrant for Mr. Philipson, but would proceed with ruling on MAA's Motion for Judgment, and it does so now.

### Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 2 of 18 PageID 1561

As described in more detail below, MAA's motion for judgment is **GRANTED** and its motion for permanent injunction is **GRANTED IN PART**. Judgment is granted in MAA's favor and a permanent injunction is issued consistent with terms described in this Order. MAA is further ordered to provide, within two weeks of the entry of this Order, declarations as to the amount of damages it believes it is entitled to pursuant to this Order. After those damages calculations are provided, the Court will determine whether to set a damages hearing.

#### BACKGROUND

A fulsome recitation of the facts in this case can be found in the Court's previous orders. (See ECF No. 69 at PageID 742–44; ECF No. 94 at PageID 1539–42.) That background will not be fully recapitulated in this Order, which instead focuses on the elements of the case relevant to the motion before the Court.

In the Court's Order that found Mr. Philipson in contempt, it also granted in part and denied in part MAA's motion for preliminary injunction. Before issuing that Order, the Court entered an Order to Show Cause that required Mr. Philipson to respond to the underlying motion. Mr. Philipson's failure to respond to the motion for preliminary injunction and the corresponding Order to Show Cause rendered MAA's factual assertions uncontested, as the Court previously explained. (See ECF No. 91 at PageID 1476; ECF No. 94 at PageID 1546.) Mr. Philipson's failure to respond to the Motion for Judgment has similarly rendered the facts asserted as to the permanent injunction undisputed.

In addition to the permanent injunction, MAA also seeks the following judgment against Mr. Philipson:

- that Philipson is liable under each claim for the relief set forth in the First Amended Complaint (Dkt. 16);
- that Philipson is liable to MAA for all damages it has suffered by reason of his unlawful acts;

Case 2:23-cv-02186-SHL-cgc

- that Philipson is required to pay MAA treble damages for the injury he has caused under Tennessee's Consumer Protection Act;
- that Philipson is required to pay MAA's reasonable attorneys' fees and disbursements incurred during this litigation;
- that Philipson is required to pay MAA all damages to which it is entitled for his defamation, negligence per se, deceit, intentional interference with prospective business advantage, and violations of the Tennessee Personal and Commercial Computer Act of 2003;
- that Philipson is required to pay MAA the cost of this action;
- that Philipson is required to pay pre- and post-judgment interest on all amounts to which Plaintiff is due.

(ECF No. 92 at PageID 1481-82.)

## MAA'S MOTION FOR PERMANENT INJUNCTION

The Court's analysis of MAA's motion for permanent injunction follows a similar course as its analysis of MAA's motion for preliminary injunction, as the same standards are generally applicable to both. <u>See Gas Nat. Inc. v. Osborne</u>, 624 F. App'x 944, 948 (6th Cir. 2015) (citing <u>Am. Civil Liberties Union of Ky. v. McCreary Cnty.</u>, 607 F.3d 439, 445 (6th Cir. 2010) ("The standard for a permanent injunction is essentially the same as for a preliminary injunction except that the plaintiff must show actual success on the merits rather than a likelihood of success.")).<sup>1</sup> A permanent injunction requires a plaintiff to demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff

<sup>&</sup>lt;sup>1</sup> This is not to say that a court should rubber stamp the findings from the preliminary injunction stage when it is considering a request for permanent relief, as a party is not required to prove its case in full at the preliminary-injunction stage and the findings of fact and conclusions of law a court makes in granting a preliminary injunction are not binding at trial on the merits. <u>Univ. of Texas v. Camenisch</u>, 451 U.S. 390, 395 (1981). Ultimately, "a preliminary injunction has no preclusive effect—no formal effect at all—on the judge's decision whether to issue a permanent injunction." <u>Radiant Glob. Logistics, Inc. v. Furstenau</u>, 951 F.3d 393, 397 (6th Cir. 2020) (quoting <u>Gjertsen v. Bd. of Election Comm'rs</u>, 751 F.2d 199, 202 (7th Cir. 1984)).

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 4 of 18 PageID 1563

and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." <u>eBay Inc. v. MercExchange, L.L.C.</u>, 547 U.S. 388, 391 (2006) (citations omitted). "The four-factor <u>eBay</u> test is a balancing test under which the plaintiff must demonstrate that the totality of circumstances weighs in its favor." <u>Smith & Nephew, Inc. v. Synthes (U.S.A.)</u>, 466 F. Supp. 2d 978, 982 (W.D. Tenn. 2006), <u>amended in part</u>, No. 02-2873 MA/A, 2006 WL 8435285 (W.D. Tenn. Oct. 27, 2006) (citing <u>Canadian Lumber Trade All. v. United States</u>, 441 F.Supp.2d 1259, 1261–62 (CIT 2006), <u>aff'd</u>, 517 F.3d 1319 (Fed. Cir. 2008)). Granting or denying "permanent injunctive relief is an act of equitable discretion by the district court." <u>Id.</u> "Under Federal Rule of Civil Procedure 65(d), an order granting an injunction must (1) state the reasons why it issued, (2) state its terms specifically, and (3) describe in reasonable detail the acts restrained or required." <u>Gas Nat. Inc. v. Osborne</u>, 624 F. App'x 944, 948 (6th Cir. 2015).

Mr. Philipson has had multiple opportunities to challenge MAA's factual allegations against him in the motions for injunctive relief, both preliminary and permanent, and has not done so. Nor did he challenge the Court's factual or legal findings in its Order granting in part MAA's preliminary injunction.<sup>2</sup> Therefore, the evidence before the Court at this stage remains

<sup>&</sup>lt;sup>2</sup> The Court also notes that Mr. Philipson never filed an answer in this matter and, when he was given the opportunity during his deposition to challenge many of the factual assertions MAA has made in this litigation, he did not do so, instead repeatedly saying that he did not recall whether he engaged in the actions alleged by MAA. (See, e.g., ECF No. 87-1 at PageID 1173 ("So instead of sitting here and going through all this stuff and me saying I don't recall and all that, we can just switch it around because I'm just not going to recall anything anymore."); <u>id.</u> at PageID 1198 ("I don't recall any of this. So we can go through it one by one. I don't recall any of this, unfortunately."); <u>id.</u> at PageID 1200 ("I'm not going to deny anything."); <u>id.</u> at PageID 1231 ("Again, I'm not unequivocally denying anything right now. I don't – I have no recollection of doing it."); <u>id.</u> at PageID 1259–60 ("I don't recall a lot of the stuff. And if I did do it, . . . I don't like the way I'm being – the way this is portrayed. And some of it's pretty terrible. So it's making me think even I got more mental problems than I really do if I did do this.").)

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 5 of 18 PageID 1564

unchanged—and unchallenged—as that which was before the Court at the preliminary injunction stage. And, just as was the case as to the preliminary injunction, "when there is no dispute of material fact alleged, then it may be appropriate for a court to decide a case without an evidentiary hearing." <u>United States v. Owens</u>, 54 F.3d 271, 277 (6th Cir. 1995) (citing <u>United States v. McGee</u>, 714 F.2d 607, 613 (6th Cir. 1983)).

Given the state of the record, MAA has demonstrated each of the elements required for the imposition of a permanent injunction, thus warranting converting the preliminary injunction as it applies to its claims for negligence <u>per se</u> and defamation.<sup>3</sup> The analysis the Court articulated in its Order establishing the preliminary injunction applies with equal force here and is described briefly below in the context of <u>eBay</u>'s four-factor test.

First, MAA has shown that it has suffered irreparable injury as a result of Mr. Philipson's actions both in the virtual and tangible realms. Mr. Philipson's stalking has caused emotional harm to MAA's employees (see, e.g., Decl. of Jay Blackman (ECF No. 84)), and has caused MAA to incur significant costs, including having to purchase credit monitoring services for its employees and outside counsel, employing cyberstalking experts to trace Mr. Philipson's

<sup>&</sup>lt;sup>3</sup> MAA filed its Motion for Judgment prior to the Court's Order that put in place the preliminary injunction. The Order explained that, although MAA demonstrated a likelihood of success as to its negligence per se and defamation claims, it did not provide evidence that it relied upon Mr. Philipson's false representations to its detriment, a necessary element of its common-law fraud and deceit claim. (ECF No. 94 at PageID 1548–50.) The Court thus denied the motion for preliminary injunction as to that claim, but noted that it "has not identified any activities that MAA seeks to enjoin Mr. Philipson from engaging in that are tied exclusively to its claim for common-law deceit." (Id. at PageID 1550 n.10.)

At the contempt hearing, MAA's counsel indicated that MAA did not have any additional proof to support its claim for deceit. The permanent injunction is thus **DENIED** as to that claim. However, as was the case with the preliminary injunction, that denial has little practical effect, as none of the activities enjoined through this Order are connected solely to MAA's deceit claim.

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 6 of 18 PageID 1565

activities, and incurring significant attorneys' fees to address Mr. Philipson's trademark infringement (ECF No. 82 at PageID 919).

At the same time, Mr. Philipson's defamatory statements found in the multiple emails he sent in early January 2024 included a series of misrepresentations and innuendo regarding MAA, its employees, and current and former employees of Bass, Berry & Sims, MAA's counsel in the case. Those statements resulted in the sort of irreparable reputational harm to MAA and its employees and that harm is likely to continue absent implementation of the permanent injunctive relief described below.

Second, MAA has demonstrated that the remedies available at law are inadequate to compensate for the injuries it has suffered at the hands of Mr. Philipson, including that which has resulted from his negligence <u>per se</u> and defamatory conduct.<sup>4</sup> Monetary damages alone are insufficient to compensate MAA for the harms that have resulted from those actions, and enjoining Mr. Philipson from engaging in the activities that give rise to MAA's claims is necessary.

Third, considering the balance of hardships between the MAA and Mr. Philipson, a remedy in equity in the form of this permanent injunction is warranted. Any harm Mr. Philipson may encounter due to the issuance of the permanent injunction (which is minimal, at most), is outweighed by the ongoing harms MAA would suffer if the injunction were denied. Moreover,

<sup>&</sup>lt;sup>4</sup> In the hearing on the contempt finding, counsel for MAA indicated that it was unaware of any additional tortious actions that Mr. Philipson had engaged in after the Court entered the preliminary injunction. Given that some of Mr. Philipson's tortious activities took place between MAA's filing of the lawsuit and the preliminary injunction Order, a permanent imposition of the provisions of the preliminary injunction seems to be necessary—and is likely to ensure that Mr. Philipson does not revert to his previous activities.

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 7 of 18 PageID 1566

the terms of the permanent injunction specifically carve out limitations that ensure that Mr. Philipson's First Amendment rights are protected.

Lastly, the public interest would not be disserved by a permanent injunction. As explained in the preliminary injunction Order, the public, which includes MAA, its employees, its counsel, and others, have a right to be protected from Mr. Philipson's stalking and defamation.

Given the foregoing, the preliminary injunction previously granted to Plaintiff is hereby **CONVERTED** to a permanent injunction.

### IT IS THEREFORE ORDERED THAT:

- 1. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from creating or setting up any social media account or any other type of account in the name, or a confusingly similar name, of any Mid-America Apartment Communities, Inc., Mid-America Apartments, L.P., any of their respective affiliates, and its and their respective present or past shareholders, directors, officers, managers, partners, employees (other than Defendant), agents and professional advisors (including but not limited to attorneys, accountants and consultants (collectively, "MAA Persons"), without such individual's or entity's express written permission.
- 2. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from attempting to access or take control of any social media account or any other type of account or device, or to change the login credentials of any account or device, in the name of any MAA Person without such individual's or entity's express written permission.

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 8 of 18 PageID 1567

- 3. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for jobs in the name of any individual MAA Person without the individual's express written permission.
- 4. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for credit cards or any other type of financial instrument or loan in the name of any MAA Person without the individual's or entity's express written permission.
- 5. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from purchasing domain names that contain the MAA trademarks and/or from setting up and/or publishing a website that uses MAA's trademarks in an infringing manner or in a manner that is likely to cause confusion among MAA customers and the apartment rental marketplace.
- 6. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from setting up social media accounts, whether on LinkedIn or otherwise, that falsely purport to be a MAA-sanctioned account or that use the MAA trademarks in a manner that is infringing or likely to cause confusion among MAA customers and the apartment rental marketplace.
- Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from accessing or attempting to access MAA's computer systems or servers.
- 8. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from contacting any individual MAA Person in-

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# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 9 of 18 PageID 1568

person or by phone, electronic mail, text message, social media, direct message, or any other method, without the express written consent of such person.

- 9. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261A.
- Defendant shall not come within 500 feet of any MAA office, to include parking structures.
- 11. Other than as noted in Paragraph 12 below, Defendant Philipson, whether under his own name or a false name, and those in active concert with him, are hereby enjoined and prohibited from using, posting, publicizing, disseminating, or distributing statements, including but not limited to e-mails, the leaving of a review on an internet platform, or assisting another in doing same, that state or imply that:

a. MAA's General Counsel, Rob DelPriore has participated in illegal or improper stock transactions;

b. that it was unethical or improper for Rob DelPriore to have previously been employed at Bass, Berry & Sims;

c. there is something improper, illegal, or untoward about the corporate structure of MAA;

d. that MAA lacks proper insurance coverage;

e. that MAA and its corporate activities have compromised "tenant safety;"

f. that MAA has inadequate mold and water remediation such that they threaten tenant health and "property integrity";

g. that MAA spends lavishly at the expense of the tenants;

h. that MAA has dangerous policies with regard to residents' pets;

i. that MAA has inadequate grill safety measures;

j. that MAA or its counsel has committed wrongful or improper conduct by attempting to serve a subpoena in his lawsuit.

- 12. Nothing in this Order shall in any way limit Defendant's right to make whistleblowing complaints or to otherwise communicate with a government agency, as provided for, protected under, or warranted by applicable law.
- 13. Any confidential material belonging to MAA in Defendant's possession, custody, or control (or in the possession, custody, or control of those in active concert with him) shall be immediately returned to MAA without any copies being retained.

# MAA'S MOTION FOR JUDGMENT

At the contempt hearing, MAA indicated that it was seeking the sanction of judgment under Federal Rules of Civil Procedure 16 and 37, as well as the Court's inherent authority.

Under Rule 16(f), courts "may issue any just orders," including rendering a default judgment against a disobedient party, if the party "(A) fails to appear at a scheduling or other pretrial conference; (B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or (C) fails to obey a scheduling or other pretrial order." Rule 37, whose sanctions are incorporated into Rule 16(f), also provides that a court may issue just orders for failure "to obey an order to provide or permit discovery," including rendering a default judgment against a disobedient party.<sup>5</sup> Finally, federal courts have the inherent power to manage

<sup>&</sup>lt;sup>5</sup> "Unlike under [Federal Rule of Civil Procedure] 55, which requires entry of default as a predicate to default judgment, Rules 16(f) and 37(b)(2)(A)(vi) authorize the Court to render default judgment against the disobedient party." <u>Stewart v. Complete Home Care Servs. of TN,</u> Inc., No. 1:19-CV-00082, 2021 WL 3037499, at \*4 (M.D. Tenn. July 19, 2021), report and recommendation adopted, No. 1:19-CV-00082, 2021 WL 3634780 (M.D. Tenn. Aug. 17, 2021).

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 11 of 18 PageID 1570

their own dockets and are imbued with powers that are "governed not by rule or statute but by

the control necessarily vested in courts to manage their own affairs so as to achieve the orderly

and expeditious disposition of cases." Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)

(quoting Link v. Wabash R. Co., 370 U.S. 626, 630-631 (1962)).

Granting judgment in MAA's favor is warranted on each of these grounds.

#### A. Judgment Under Rules 16 and 37

Courts in the Sixth Circuit consider four factors when determining whether dismissal is

an appropriate sanction for failure to comply with a discovery obligation or other court order:

(1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager v. Wisconsin Cent. Ltd., 924 F.3d 831, 837 (6th Cir. 2019) (quoting United States v.

Reyes, 307 F.3d 451, 458 (6th Cir. 2002)). "Although no one factor is dispositive, dismissal is

proper if the record demonstrates delay or contumacious conduct . . . [which] refers to behavior

that is perverse in resisting authority and stubbornly disobedient." Id. (citations omitted); see

also Ndabishuriye v. Albert Schweitzer Soc'y, USA, Inc., 136 F. App'x 795, 800 (6th Cir. 2005)

("In general, the first factor—bad faith—is the most important.") Granting such relief is up to

the Court's discretion and, "[s]imply put, 'if a party has the ability to comply with a discovery

order and does not, dismissal,' and we add or entry of default, 'is not an abuse of discretion.'"

Bank One of Cleveland, N.A. v. Abbe, 916 F.2d 1067, 1073 (6th Cir. 1990) (quoting Regional

Refuse Sys. v. Inland Reclamation Co., 842 F.2d 150, 154 (6th Cir. 1988)).

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 12 of 18 PageID 1571

### 1. Mr. Philipson's Conduct is Willful, in Bad Faith and Contumacious

Mr. Philipson's failure to abide by this Court's orders and failure to engage in the discovery process are willful and in bad faith, and he has repeatedly demonstrated contumacious conduct. He has failed to appear at multiple pretrial conferences and has failed to obey multiple orders this Court has issued. For example, after the Court referred the matter to Chief Magistrate Judge Tu M. Pham for mediation in November 2023 (ECF No. 71), Judge Pham held a status conference that Mr. Philipson failed to attend, and then held the mediation that Mr. Philipson also did not attend (ECF Nos. 72 & 74). The Court set a status conference related to MAA's motion for preliminary injunction for February 8, 2024, to be conducted via Microsoft Teams. (ECF No. 88.) Mr. Philipson also failed to attend that hearing. (ECF No. 89.)<sup>6</sup> The Court has issued multiple show cause orders to which Mr. Philipson has failed to respond. (See ECF Nos. 90 & 91.) After the Court found Mr. Philipson in contempt (ECF No. 94), it set a hearing to give him the opportunity to purge the contempt (ECF No. 95), and he failed to appear at the hearing (ECF No. 96).

Mr. Philipson has similarly refused to engage in discovery and has made inconsistent representations to MAA regarding the existence of documents that he may have that are responsive to the discovery requests it propounded upon him.<sup>7</sup> For example, on April 7, 2023,

<sup>&</sup>lt;sup>6</sup> As it does with all virtual hearings, the Court filed a setting letter on the docket and followed up with an email to the Parties prior to the conference instructing them how to join the hearing. The Court sent that email with the instructions at 2:16 p.m. EST on February 7, 2024, to Court staff, all counsel of record, and to three email addresses that Philipson has been known to use. Seventy-eight days later, Mr. Philipson responded to all of the email recipients to say "Sorry – I cannot make this! See you in June for the trial. Thank you for your email." It was Mr. Philipson's first communication with the Court since December 3, 2023, and, needless to say, untimely. (See ECF No. 77.)

<sup>&</sup>lt;sup>7</sup> On April 11, 2023, before Mr. Philipson was a party to the case, MAA served him with a subpoena to produce six categories of documents. (See ECF Nos. 19 & 19-1.) After Mr. Philipson was added as a party, MAA propounded multiple sets of discovery requests upon him,

# Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 13 of 18 PageID 1572

Mr. Philipson emailed Bass, Berry & Sims that "[w]e are about to publicly release a complaint we filed with the SEC, DOJ, and IRS regarding the accuracy of their financials in 2021." (ECF No. 19-2 at PageID 293.) Similarly, on September 8, 2023, Mr. Philipson informed MAA's counsel that he "possess[ed] the tracking details for the disk sent to the SEC, IRS, & DOJ." (ECF No. 62-2 at PageID 605.) Despite these statements, according to MAA, Mr. Philipson never produced any such documents.

On September 8, Mr. Philipson also appeared to hint that he might have additional materials responsive to the subpoena, but he placed the onus on MAA to identify materials it had so that he could then verify whether he also had materials in his possession. He wrote to MAA's counsel the following:

Might I propose that you share some of the specific documents in question? This would allow me to cross-reference and ensure that there hasn't been any oversight or misunderstanding. . . .

Following November 2021, my recollections consist of interactions with many individuals and entities, including employees, ex-employees, and contractors, among others, plus emergency notifications associated with MAA's services. As for direct correspondence from MAA, nothing specific stands out. There was an email from Robert Delpriore earlier this year, which, to be honest, felt a bit out in left field. If you've found something specific in this regard, I'd appreciate it if you could point it out, and I'll certainly take a look.

(ECF No. 62-7 at PageID 630–31.) The next day, Mr. Philipson told MAA's counsel that he would be happy to review things another time to make sure he did not overlook anything, but wrote that "[i]f there's a particular detail or item you have in mind, kindly bring it to my attention—it will expedite the process." (Id. at PageID 630.)

which included overlapping requests for the information sought in the subpoena. According to MAA, Mr. Philipson has been non-responsive to the subpoena and the discovery requests, both before and after he was named a party to the case.

### Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 14 of 18 PageID 1573

On September 11, 2023, Mr. Philipson again represented that he found at least one responsive document, "a LinkedIn screenshot from Mr. Delpriore linking him with Bass, Berry, and Sims." (ECF No. 62-4 at PageID 612.) He also wrote that "there hasn't been much beyond that," which implies there was at least something else beyond that. (Id.) Yet, he did not produce that screenshot or, it appears, anything else he referenced having located. Mr. Philipson has also implied in his communications with counsel and in his filings with the Court that he has written Google reviews of MAA (ECF No. 62-5 at PageID 621), and filed a formal complaint "against the legal counsel for the Plaintiff with the Board of Professional Responsibility of the Supreme Court of Tennessee" (ECF No. 33 at PageID 344). MAA represents that Mr. Philipson has not produced anything related to either of these categories of documents, despite his obligation to do so. (ECF No. 62 at PageID 595.)

In short, Mr. Philipson has treated discovery as a game of cat-and-mouse. But contrary to Mr. Philipson's approach, discovery involves the production of all relevant, non-privileged materials, and is not a process of determining what documents the requesting party already has before tailoring your production to match those documents.

As the foregoing examples illustrate, Mr. Philipson's refusal to engage in discovery, to honor his discovery obligations, and his repeated flouting of this Court's orders, is willful, in bad faith, and the sort of contumacious conduct warranting default judgment as a sanction under both Rule 16 and 37.

### 2. MAA Has Been Prejudiced by Mr. Philipson's Conduct

MAA has clearly been prejudiced by Mr. Philipson's conduct. It has attended numerous hearings that Mr. Philipson has failed to attend. It has filed multiple motions in an attempt to get Mr. Philipson to provide discovery. It has repeatedly sent him emails in an effort to advance this

14

litigation, and frequently been ignored. This factor also weighs in favor of granting default judgment in MAA's favor.

### 3. Mr. Philipson was Warned That Default May be Entered Against Him

The Court previously warned Mr. Philipson that a failure to respond to its show cause orders may result in default being entered against him. (ECF No. 21.) The Court's more recent warnings to Mr. Philipson focused on the steps it will take related to his ongoing contempt. (See ECF No. 90 at PageID 1473–74; ECF No. 94 at PageID 1557.) The fact that the Court has not recently warned him that a default judgment might be entered against him does not forestall the entry of a default judgment in light of his ongoing contumacious conduct. See Mager, 924 F.3d at 840 (explaining that "a district court should impose a penalty short of dismissal unless the derelict party has engaged in bad faith or contumacious conduct" and that a "lack of a prior warning would not prevent dismissal of the complaint as a first sanction").

Mr. Philipson has previously been warned that a failure to abide by the Court's orders may result in default being entered against him and his repeated disregard of the Court's orders, and waste of judicial and counsel's resources, weigh in favor of granting a default judgment against him.

#### 4. Less Drastic Sanctions Were Imposed and Considered

Finally, the Court has both considered and imposed less drastic sanctions against Mr. Philipson based upon his conduct in this matter. The Court held Mr. Philipson in contempt after issuing multiple orders to show cause that went unanswered. (ECF No. 94.) The Court set a hearing to provide Mr. Philipson an opportunity to purge that contempt, but he failed to attend. (ECF No. 96.) The Court warned Mr. Philipson that a failure to attend the hearing may result in it issuing a warrant for his arrest and directing that he be held in custody pending a hearing.

15

### Case 2:23-cv-02186-SHL-cgc Document 97 Filed 05/06/24 Page 16 of 18 PageID 1575

(ECF No. 94.) At the contempt hearing, the Court explained to MAA's counsel that, rather than issue an arrest warrant for Mr. Philipson, it would instead rule on the permanent injunction motion. In other words, the Court has done all it can to try to get him to cooperate in this litigation, short of ordering the United States Marshals Service to bring him before the Court. This factor also weighs in favor of entering default judgment against Mr. Philipson.

Consistent with the foregoing, each of the factors that must be considered when determining whether dismissal is an appropriate sanction for failure to comply with a discovery obligation or other court order weigh in favor of granting default judgment in MAA's favor.

### **B.** Judgment Pursuant to the Court's Inherent Authority

In addition to being warranted under Rules 16 and 37, default judgment is also warranted under the Court's inherent authority. The Court does not arrive at this conclusion lightly, recognizing that, "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion." <u>Chambers</u>, 501 U.S. at 44 (citing <u>Roadway Express v. Piper</u>, 447 U.S. 752, 764 (1980)).

However, Mr. Philipson's actions have continually thwarted the orderly and expeditious disposition of this case. He did not engage in mediation, despite the Court's appointment of one of its magistrate judges to conduct the mediation. His refusal to engage in discovery has made it impossible for MAA to abide by the deadlines set in the Scheduling Order. (See ECF No. 47.) He has ignored the Court's orders, failed to attend multiple hearings and to respond to multiple show cause orders. In short, if Mr. Philipson's conduct is not the sort that warrants the invocation of the Court's inherent powers to manage its docket, then it is difficult to imagine what conduct would so qualify.

Therefore, under Rules 16 and 37 and this Court's inherent authority, the Court

GRANTS MAA's Motion for Judgment. The terms of the judgment are as follows:

- Mr. Philipson is liable under each claim for the relief set forth in the First Amended Complaint (ECF No. 16);
- Mr. Philipson is liable to MAA for all damages it has suffered by reason of his unlawful acts;
- Mr. Philipson is required to pay enhanced and/or punitive damages to MAA, as determined by this Court, for his deliberate and willful trademark infringement and unfair competition;
- Mr. Philipson is required to pay MAA treble damages for the injury he has caused under Tennessee's Consumer Protection Act;
- Mr. Philipson is required to pay MAA's reasonable attorneys' fees and disbursements incurred during this litigation;
- Mr. Philipson is required to pay MAA all damages to which it is entitled for his defamation, negligence per se, deceit, intentional interference with prospective business advantage, and violations of the Tennessee Personal and Commercial Computer Act of 2003;
- Mr. Philipson is required to pay MAA the cost of this action;
- Mr. Philipson is required to pay pre- and post-judgment interest on all amounts to which Plaintiff is due.

Within fourteen days of the entry of this Order, MAA shall submit a detailed description

of the damages it has incurred, consistent with the findings within this Order. To the extent a

damages hearing will be necessary, the Court will set it by separate order.

# CONCLUSION

MAA's Motion for Sanctions of Judgment and Permanent Injunction Against Philipson is

hereby GRANTED IN PART. Mr. Philipson is permanently enjoined from engaging in the

activities as outlined above. (See supra pp. 7-10.) Default judgment is also entered in MAA's

favor, consistent with the terms outlined above.

The Clerk is **DIRECTED** to mail this Order to:

Dennis Michael Philipson 6178 Castleton Way Alexandria, VA 22310 The Clerk shall also email this Order to dphilipson1982@yahoo.com and

mphilly@gmail.com.

IT IS SO ORDERED, this 6th day of May, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
v.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

## ORDER STRIKING PRETRIAL ORDER DEADLINE, PRETRIAL CONFERENCE AND NON-JURY TRIAL AND SETTING DAMAGES HEARING, IF NECESSARY

On May 6, 2024, the Court entered an Order Granting Motion for Sanctions of Judgment and Granting in Part Motion for Permanent Injunction. (ECF No. 97.) Given that Order, there will not be a trial in this matter. Therefore, the Scheduling Order's Joint Proposed Pretrial Order due on May 28, 2024, the June 4, 2024 Pretrial Conference and the June 17, 2024 non-jury trial are hereby **STRICKEN**. (See ECF No. 47 at PageID 438.)

The Order provided that "[w]ithin fourteen days of the entry of this Order, [Mid-America Apartment Communities, Inc.] shall submit a detailed description of the damages it has incurred, consistent with the findings within this Order. To the extent a damages hearing will be necessary, the Court will set it by separate order." (ECF No. 97 at PageID 1576.) If a damages hearing is necessary, it will now take place at 2:00 p.m. Tuesday, June 4, 2024. The Court will inform the Parties on the docket whether it will conduct the June 4 hearing.

IT IS SO ORDERED, this 9th day of May, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

) ) )

MID-AMERICA APART COMMUNITIES, INC.	MENT,	
	Plaintiff,	
V.		
DENNIS PHILIPSON		
	Defendant.	

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

## MID-AMERICA APARTMENT COMMUNITIES, INC.'S DESCRIPTION OF DAMAGES IT HAS SUFFERED

Pursuant to this Court's Order of May 6, 2024 (Dkt. 97), the Plaintiff, Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff") sets forth the following description of the damages that it has suffered in this action. In support of this description of its damages, Plaintiff attaches the Declarations of Eugenia McGown (**Ex. 1**) and Paige Waldrop Mills (**Ex. 2**).

1. When Mr. Philipson first began his harassment of MAA, it hired the law firm Holland & Knight to investigate the matter and to determine its options for stopping the behavior. The fees paid to Holland & Knight included hiring a private investigator to help determine who was responsible for the harassment. The cost of Holland & Knight's factual investigation of the situation and the provision of some legal advice surrounding it amounted to approximately **\$6,633.09**. *See* Declaration of Eugenia McGown at  $\P$  6.

2. Once the trademark infringement and unfair competition began on-line, someone whom MAA later determined to be Dennis Philipson--purchased numerous infringing domains and created fake websites and LinkedIn accounts in an effort to harass and disparage MAA in the marketplace and confuse its customers. Mr. Philipson used numerous fake names, email addresses,

# Case 2:23-cv-02186-SHL-cgc Document 99 Filed 05/17/24 Page 2 of 4 PageID 1580

social media accounts, and the like to obscure his identity. He attempted to hack into MAA's computer systems and he harassed numerous MAA employees by creating false social media accounts in their names, applying for jobs in their names, and physically and digitally stalking them. This necessitated the hiring of Johnathan Bridbord of FTI Consulting Technology, LLC ("FTI") to assist MAA's counsel at Bass, Berry & Sims in determining the identity of the perpetrator. Mr. Bridbord's investigation revealed that the digital forensic evidence established that Mr. Phillipson was the perpetrator of these acts. MAA has paid FTI **\$60,874** and would not have incurred the cost of hiring FTI but for Philipson's unlawful harassment and infringement. *Id.* at ¶ 7.

3. MAA was also forced to spend **\$584.55** to purchase more than four dozen domain names containing the MAA marks to prevent Philipson from creating even more infringing webpages and thus increasing the harm. MAA would not have purchased these domain names but for Philipson's unlawful harassment and infringement. *Id.* at  $\P$  8.

4. Mr. Philipson's harassment extended to undersigned counsel--he applied for two 330,000 credit cards in the name of Paige Mills and her husband, applied for jobs in her name, made frivolous complaints to the Board of Professional Responsibility, signed counsel up for unwanted mailing lists and the like. MAA incurred **\$953.80** in costs to provide credit monitoring/identity theft protection with LifeLock and Equifax for its counsel. *Id.* at ¶ 9.

5. In addition to the reputational harm and loss of goodwill caused by Philipson's defamatory communications and his attempts to destroy the company's relationships with its employees--amounts that cannot be easily quantified--the total of the actual costs incurred by Plaintiff in bringing this action to stop Mr. Philipson's trademark infringement, unfair competition,

defamation, and harassment, and various other tortious conduct is approximately **\$69,045.44**. *Id*. at ¶ 9.

This amount is in addition to the attorney fees and costs in the amount of \$371,390.41 paid to Bass, Berry & Sims as set forth in the Declaration of Paige Mills. See Ex. 2 at ¶ 8.

7. As per this Court's Order at Dkt. 97 p. 17, Plaintiff has established that it is entitled to enhanced damages under the Lanham Act and treble damages pursuant to its claims under the Tennessee Consumer Protection Act. Accordingly, MAA has shown that it is entitled to at least **\$207,136.32** (three times the amount in ¶ 5).

8. MAA therefore asserts that it is entitled to **\$207,136.32** (enhanced damages from ¶ 7) plus **\$371,390.41** (total attorney fees from ¶ 6), totaling <u>\$578,526.73</u>, plus pre- and post-judgment interest. Accordingly, MAA respectfully requests a final judgment for this amount, plus pre- and post-judgment interest.

Respectfully Submitted,

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 pmills@bassberry.com

/s/ John Golwen John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 jgolwen@bassberry.com Jordan.thomas@bassberry.com

Counsel for MAA

# **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by the Court's ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 Phillydee100@gmail.com

This 17th<sup>h</sup> Day of May, 2024.

/s/ Paige Waldrop Mills Paige Waldrop Mills

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Case 2:23-cv-02186-SHL-cgc

Document 99-1 PageID 1583

Filed 05/17/24 Page 1 of 1

# **Exhibit 1**

Case 2:23-cv-02186-SHL-cgc

Document 99-2 PageID 1584 Filed 05/17/24 Page 1 of 1

# Exhibit 2

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Document 100 Filed 05/20/24 Page 1 of 2 PageID 1585

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
ν.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

## ORDER DETERMINING DAMAGES HEARING UNNECESSARY AT THIS TIME AND INSTRUCTING PLAINTIFF TO FILE EXHIBITS

On May 9, 2024, the Court entered an Order Striking Pretrial Order Deadline, Pretrial Conference and Non-Jury Trial and Setting Damages Hearing, If Necessary. (ECF No. 98.) In the Order, the Court explained that, "[i]f a damages hearing is necessary, it will now take place at 2:00 p.m. Tuesday, June 4, 2024. The Court will inform the Parties on the docket whether it will conduct the June 4 hearing." (<u>Id.</u>)

On May 17, 2024, Plaintiff Mid-America Apartment Communities, Inc. ("MAA"), filed its description of damages, which referenced, and purported to include, two exhibits of declarations that substantiated its damages claims. (ECF No. 99.) MAA did not attach either exhibit. (See id.) If MAA intends to rely on the declarations in support of its damages claims, it must supplement its filing with the exhibits within three days of the entry of this Order.

Consistent with Local Rule 7.2(a)(2), to the extent Mr. Philipson would like to reply to MAA's damages claims, he shall have fourteen days from the date of MAA's supplemental to do so.

Given that this matter may not be fully briefed by June 4, 2024, the Court will not

conduct the damages hearing that day. If a hearing is necessary, it will be set by separate order.

IT IS SO ORDERED, this 20th day of May, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE Case 2:23-cv-02186-SHL-cgc

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

)

MID-AMERICA APARTM COMMUNITIES, INC.	IENT Plaintiff,
V.	
DENNIS PHILIPSON	

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

NOTICE OF FILING OF CORRECTED STATEMENT OF DAMAGES WITH EXHIBITS

Defendant.

The Plaintiff, Mid-America Apartment Communities, Inc. ("MAA") gives notice of the

filing of a corrected version of its Statement of Damages with the referenced Declarations. The

following documents are attached:

Ex. A Description of Damages

Ex. 1 Eugenia McGown Declaration

Ex. 2 Paige Mills Declaration

Respectfully Submitted,

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 pmills@bassberry.com

/s/ John Golwen John Golwen, BPR. No. 014324

Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103

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Tel: (901) 543-5903 jgolwen@bassberry.com Jordan.thomas@bassberry.com

Counsel for MAA

Case 2:23-cv-02186-SHL-cgc

Document 101 Filed 05/20/24 Page 3 of 3 PageID 1589

# **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by the Court's ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 Phillydee100@gmail.com

This 20th Day of May, 2024.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

) ) )

MID-AMERICA APART COMMUNITIES, INC.	MENT,	
	Plaintiff,	
v.		
DENNIS PHILIPSON		
	Defendant.	

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

## MID-AMERICA APARTMENT COMMUNITIES, INC.'S DESCRIPTION OF DAMAGES IT HAS SUFFERED

Pursuant to this Court's Order of May 6, 2024 (Dkt. 97), the Plaintiff, Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff") sets forth the following description of the damages that it has suffered in this action. In support of this description of its damages, Plaintiff attaches the Declarations of Eugenia McGown (**Ex. 1**) and Paige Waldrop Mills (**Ex. 2**).

1. When Mr. Philipson first began his harassment of MAA, it hired the law firm Holland & Knight to investigate the matter and to determine its options for stopping the behavior. The fees paid to Holland & Knight included hiring a private investigator to help determine who was responsible for the harassment. The cost of Holland & Knight's factual investigation of the situation and the provision of some legal advice surrounding it amounted to approximately **\$6,633.09**. *See* Declaration of Eugenia McGown at  $\P$  6.

2. Once the trademark infringement and unfair competition began on-line, someone whom MAA later determined to be Dennis Philipson--purchased numerous infringing domains and created fake websites and LinkedIn accounts in an effort to harass and disparage MAA in the marketplace and confuse its customers. Mr. Philipson used numerous fake names, email addresses,

#### Case 2:23-cv-02186-SHL-cgc Document 101-1 Filed 05/20/24 Page 2 of 4 PageID 1591

social media accounts, and the like to obscure his identity. He attempted to hack into MAA's computer systems and he harassed numerous MAA employees by creating false social media accounts in their names, applying for jobs in their names, and physically and digitally stalking them. This necessitated the hiring of Johnathan Bridbord of FTI Consulting Technology, LLC ("FTI") to assist MAA's counsel at Bass, Berry & Sims in determining the identity of the perpetrator. Mr. Bridbord's investigation revealed that the digital forensic evidence established that Mr. Phillipson was the perpetrator of these acts. MAA has paid FTI **\$60,874** and would not have incurred the cost of hiring FTI but for Philipson's unlawful harassment and infringement. *Id.* at ¶ 7.

3. MAA was also forced to spend **\$584.55** to purchase more than four dozen domain names containing the MAA marks to prevent Philipson from creating even more infringing webpages and thus increasing the harm. MAA would not have purchased these domain names but for Philipson's unlawful harassment and infringement. *Id.* at  $\P$  8.

4. Mr. Philipson's harassment extended to undersigned counsel--he applied for two 330,000 credit cards in the name of Paige Mills and her husband, applied for jobs in her name, made frivolous complaints to the Board of Professional Responsibility, signed counsel up for unwanted mailing lists and the like. MAA incurred **\$953.80** in costs to provide credit monitoring/identity theft protection with LifeLock and Equifax for its counsel. *Id.* at ¶ 9.

5. In addition to the reputational harm and loss of goodwill caused by Philipson's defamatory communications and his attempts to destroy the company's relationships with its employees--amounts that cannot be easily quantified--the total of the actual costs incurred by Plaintiff in bringing this action to stop Mr. Philipson's trademark infringement, unfair competition,

defamation, and harassment, and various other tortious conduct is approximately **\$69,045.44**. *Id*. at ¶ 9.

This amount is in addition to the attorney fees and costs in the amount of \$371,390.41 paid to Bass, Berry & Sims as set forth in the Declaration of Paige Mills. See Ex. 2 at ¶ 8.

7. As per this Court's Order at Dkt. 97 p. 17, Plaintiff has established that it is entitled to enhanced damages under the Lanham Act and treble damages pursuant to its claims under the Tennessee Consumer Protection Act. Accordingly, MAA has shown that it is entitled to at least **\$207,136.32** (three times the amount in ¶ 5).

8. MAA therefore asserts that it is entitled to **\$207,136.32** (enhanced damages from ¶ 7) plus **\$371,390.41** (total attorney fees from ¶ 6), totaling <u>\$578,526.73</u>, plus pre- and post-judgment interest. Accordingly, MAA respectfully requests a final judgment for this amount, plus pre- and post-judgment interest.

Respectfully Submitted,

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 pmills@bassberry.com

/s/ John Golwen John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 jgolwen@bassberry.com Jordan.thomas@bassberry.com

Counsel for MAA

Case 2:23-cv-02186-SHL-cgc

# **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by the Court's ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 Phillydee100@gmail.com

This 17th<sup>h</sup> Day of May, 2024.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

37921395.1

Case 2:23-cv-02186-SHL-cgc

Document 101-2 PageID 1594

Filed 05/20/24 Page 1 of 5

# Exhibit 1

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

)

MID-AMERICA APART COMMUNITIES, INC.	MENT	
	Plaintiff,	
V.		
DENNIS PHILIPSON		
	Defendant.	

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

**DECLARATION OF EUGENIA MCGOWN AS TO DAMAGES** 

I am of majority age and have first-hand knowledge of the facts set out below:

1. I am employed by Plaintiff Mid-America Apartment Communities, Inc ("MAA")

as a Senior Vice President and Chief Litigation Counsel. I am a licensed attorney in the States of

Tennessee and Mississippi. I have overseen this matter on behalf of MAA in my role as Senior

Vice President and Chief Litigation Counsel.

2. In this Court's Order of May 6, 2024, Docket No. 97, this Court granted MAA's

Motion for Sanctions of Judgment and granted in part its Motion for Permanent Injunction.

- 3. The Court entered judgment against Philipson as follows:
  - Mr. Philipson is liable under each claim for the relief set forth in the First Amended Complaint (ECF No. 16);
  - Mr. Philipson is liable to MAA for all damages it has suffered by reason of his unlawful acts;
  - Mr. Philipson is required to pay enhanced and/or punitive damages to MAA,
  - as determined by this Court, for his deliberate and willful trademark infringement and unfair competition;
  - Mr. Philipson is required to pay MAA treble damages for the injury he has caused under Tennessee's Consumer Protection Act;
  - Mr. Philipson is required to pay MAA's reasonable attorneys' fees and disbursements incurred during this litigation;
  - Mr. Philipson is required to pay MAA all damages to which it is entitled for his defamation, negligence per se, deceit, intentional interference with prospective

business advantage, and violations of the Tennessee Personal and Commercial Computer Act of 2003;

- Mr. Philipson is required to pay MAA the cost of this action;
- Mr. Philipson is required to pay pre- and post-judgment interest on all amounts to which Plaintiff is due.

4. To date, MAA has been unable to fully calculate the costs of the irreparable harm for which it sought and obtained the preliminary and permanent injunctions because the damage to its goodwill and employee relationships is very difficult to quantify. Accordingly, the purpose of this Declaration is to set forth the amount of actual damages MAA has suffered to date as a result of Mr. Philipson's conduct.

5. MAA has kept records of these fees and costs in the normal course of its business and I have examined these records to obtain the amounts listed in this Declaration.

6. When Mr. Philipson first began his harassment of MAA, we hired the law firm Holland & Knight to investigate the matter and to determine our options for stopping the behavior. The fees paid to Holland & Knight included hiring a private investigator to help determine who was responsible for the harassment. The cost of Holland & Knight's factual investigation of the situation and the provision of some legal advice surrounding it amounted to approximately \$6,633.09.

7. Once the trademark infringement and unfair competition began on-line, someone whom we later determined to be Dennis Philipson--purchased numerous infringing domains and created fake websites and LinkedIn accounts in an effort to harass and disparage MAA in the marketplace and confuse its customers. Mr. Philipson used numerous fake names, email addresses, social media accounts, and the like to obscure his identity. We had reason to believe that he tried to hack into MAA's computer systems and he harassed numerous MAA employees by creating false social media accounts in their names, applying for jobs in their names, and physically and

#### Case 2:23-cv-02186-SHL-cgc Document 101-2 Filed 05/20/24 Page 4 of 5 PageID 1597

digitally stalking them. This necessitated the hiring of Johnathan Bridbord of FTI Consulting Technology, LLC ("FTI") to assist our counsel at Bass, Berry & Sims in determining the identity of the perpetrator. Mr. Bridbord's investigation revealed that the digital forensic evidence established that Mr. Phillipson was the perpetrator of these acts. As of the date of this Declaration, MAA has paid FTI \$60,874. MAA would not have incurred the cost of hiring FTI but for Philipson's unlawful harassment and infringement.

8. MAA was also forced to spend \$584.55 to purchase dozens of domain names containing the MAA marks to prevent Philipson from creating even more infringing webpages and thus increasing the harm. MAA would not have purchased these domain names but for Philipson's unlawful harassment and infringement

9. And finally, due to Mr. Philipson's harassment of our counsel (upon information and belief, he applied for two \$30,000 credit cards in the name of Paige Mills and her husband, applied for jobs in her name, made frivolous complaints to the Board of Professional Responsibility, and signed them up for unwanted mailing lists and the like), we incurred \$953.80 in costs to provide credit monitoring/identity theft protection with LifeLock and Equifax for them.

10. In addition to the reputational harm and loss of goodwill caused by Philipson's defamatory communications and his attempts to destroy the company's relationships with its employees--amounts that cannot be easily quantified--the total of the actual costs incurred by Plaintiff in bringing this action to stop Mr. Philipson's trademark infringement, unfair competition, defamation, and harassment, and various other tortious conduct is approximately \$69,045.44.

11. This amount is in addition to the attorney fees and costs in the amount of \$371,390.41 paid to Bass, Berry & Sims as set forth in the Declaration of Paige Mills.

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### Case 2:23-cv-02186-SHL-cgc Document 101-2 Filed 05/20/24 Page 5 of 5 PageID 1598

12. It is my understanding that Plaintiff has established that it is entitled to enhanced damages under the Lanham Act and treble damages pursuant to its claims under the Tennessee Consumer Protection Act. Accordingly, I believe that MAA has shown that it is entitled to at least 207,136.32 (three times the amount in ¶ 10), plus pre and post-judgment interest.

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing document is true and correct to the best of my information, knowledge, and belief.

Executed this 17th day of May, 2024.

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Eugenia McGown

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Case 2:23-cv-02186-SHL-cgc Document 101-3 Filed 05/20/24 Page 1 of 6 PageID 1599

# Exhibit 2

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APART COMMUNITIES, INC.	<b>MENT</b>	)
	Plaintiff,	) )
v.		)
DENNIS PHILIPSON		)
	Defendant.	)

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

# **DECLARATION OF PAIGE WALDROP MILLS**

I am of majority age and have first-hand knowledge of the facts set out below:

1. I am a licensed attorney in the State of Tennessee and in the Western District. I

have practiced in Tennessee for more than thirty years. I am a member of the law firm, Bass, Berry

& Sims. My firm has represented Plaintiff Mid-America Apartment Communities, Inc ("MAA")

in this case.

2. In this Court's Order of May 6, 2024, Docket No. 97, this Court granted MAA's

Motion for Sanctions of Judgment and granted in part its Motion for Permanent Injunction.

- 3. The Court entered judgement against Philipson as follows:
  - Mr. Philipson is liable under each claim for the relief set forth in the First Amended Complaint (ECF No. 16);
  - Mr. Philipson is liable to MAA for all damages it has suffered by reason of his unlawful acts;
  - Mr. Philipson is required to pay enhanced and/or punitive damages to MAA,
  - as determined by this Court, for his deliberate and willful trademark infringement and unfair competition;
  - Mr. Philipson is required to pay MAA treble damages for the injury he has caused under Tennessee's Consumer Protection Act;
  - Mr. Philipson is required to pay MAA's reasonable attorneys' fees and disbursements incurred during this litigation;
  - Mr. Philipson is required to pay MAA all damages to which it is entitled for his defamation, negligence per se, deceit, intentional interference with prospective

business advantage, and violations of the Tennessee Personal and Commercial Computer Act of 2003;

- Mr. Philipson is required to pay MAA the cost of this action;
- Mr. Philipson is required to pay pre- and post-judgment interest on all amounts to which Plaintiff is due.

4. The purpose of this Declaration is to set forth the attorney fees and costs that MAA has incurred in this litigation.

5. Throughout this case, I and the attorneys at my firm have maintained detailed billing statements for all time worked on the matter and for all costs incurred in connection with the matter. The fees and costs listed in this declaration are based upon my personal examination of these billing records.

6. Our firm's total fees associated with prosecuting these claims against Mr. Philipson total \$363,496.46. This does not include the cost of preparing the damages declarations. These fees represent a total of approximately 627.5 attorney, Litigation Technology professionals, and paralegal hours on the matter and involved the work of attorneys Paige Mills, John Golwen, Jordan Thomas, Liat Martinez, Jonathan Nelson, Litigation Technology specialists and manager, and paralegals Taira Shelton, and Teresa McClanahan.

7. Costs related to the case that were incurred by our firm were \$7,893.95 as of the date of this declaration, which include service fees, court reporters, deposition transcripts, filing and recording fees, airfare, lodging, meals, postage, subpoena fees, mileage, parking and other travel-related and out-of-pocket expenses.

8. Based upon the foregoing, the total fees and costs incurred by Plaintiff in bringing this action to stop Mr. Philipson's trademark infringement, unfair competition, defamation, and harassment, and various other tortious conduct is approximately \$371,390.41.

### Case 2:23-cv-02186-SHL-cgc Document 101-3 Filed 05/20/24 Page 4 of 6 PageID 1602

9. To arrive at these totals for our firm's fees and expenses, I used our firm's actual time and expense records.

10. The prosecution of this action was extremely involved and included (but was not limited to) the following:

- the drafting the original Complaint against two "John Does;"
- the drafting of a Motion for Expedited Discovery in order to learn the identity of the John Doe who used dozens of aliases, false email accounts, and fake phone numbers to conceal his identity in order infringe on Plaintiff's trademarks, unfairly compete with it, and to harass Plaintiff and its employees;
- the taking of extensive discovery of numerous third parties, including issuing at least 18 subpoenas to various internet companies and financial institutions to determine the identity of John Doe;
- working with an expert to interpret and direct the discovery efforts;
- responding to numerous objections made by the third parties to the issued subpoenas;
- the institution of a UDRP proceeding to obtain possession of the infringing domains;
- responding to Mr, Philipson's Motion to Quash;
- amending the Complaint to specifically name Dennis Philipson as John Doe;
- filing a Motion for Default because Philipson failed to answer the complaint;
- the issuance of written discovery to Philipson;
- the filing of a Motion to Compel and Motions for Contempt related to Philipson's failure to respond to discovery;

- responding to Philipson's Motion to Dismiss;
- responding or otherwise attending to numerous frivolous motions and arguments
  raised by Philipson, such as his Motion for ADA Accommodation, his Motion for
  Expedited Discovery once discovery had opened, his failure to agree to a
  reasonable protective order, his numerous complaints about the subpoenas issued,
  and his last minute threats to refuse to attend his deposition, which required
  extensive briefing;
- preparing expert reports;
- travel to Washington DC to take Philipson's deposition and prepare for same;
- attending to credit card applications filled out in counsel's name and supposed ethical complaints made by Philipson;
- preparing for and attending case management and status conferences that Philipson failed to attend;
- preparing for and attending mediation conference that Philipson failed to attend;
- Attending to issues caused by Philipson's relentless harassment of client including the emailing of thousands of defamatory emails and setting up of several defamatory websites involving client and emailing of client's confidential policy manual, etc;
- researching and drafting the Motion for Preliminary Injunction and adducing the evidence for same;
- researching and drafting Motion for Sanction of Judgment and for Permanent Injunction;
- traveling to and attending of contempt hearing in Memphis; and

### Case 2:23-cv-02186-SHL-cgc Document 101-3 Filed 05/20/24 Page 6 of 6 PageID 1604

• providing damages evidence as per the Court's order granting judgment.

11. Based upon my professional experience and practice and my personal review of the itemized bills in this case, the hours spent by Bass personnel were reasonable and necessary in order to address Philipson's behavior and achieve the results obtained. In my opinion, these results are in line with customary charges for an intellectual property case in this district that involved complicated discovery issues of numerous third parties to identify the Defendant and address his extensive harassment, defamation, trademark infringement, and unfair competition.

12. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing document is true and correct to the best of my information, knowledge, and belief.

Executed this 16<sup>th</sup> day of May, 2024, at Nashville, Tennessee.

Gaige Mills

Paige Mills

37913156.1

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
ν.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

### **ORDER REQUIRING SUPPLEMENTATION**

Before the Court is Plaintiff Mid-America Apartment Communities, Inc.'s ("MAA") Notice of Filing of Corrected Statement of Damages with Exhibits, filed May 20, 2024. (ECF No. 101.)<sup>1</sup>

MAA's notice includes the Declaration of Paige Waldrop Mills, one of MAA's attorneys, in which she explains that the fees for the work done on the case total \$363,496.46. (ECF No. 101-3.) According to Mills's Declaration, the fees represent 627.5 hours of work on the matter, including work by attorneys, litigation technology professionals, and paralegals. (<u>Id.</u> at PageID 1601.) This amounts to a rate of almost \$580.00 per hour. MAA also incurred costs of \$7,893.95 during this litigation, which includes expenses such as service, filing, and recording fees and travel-related costs. (<u>See id.</u>)

<sup>&</sup>lt;sup>1</sup> MAA filed its original description of its damages on May 17, 2024. (See ECF No. 99.) That notice referenced, but did not include, two exhibits that supported its damages calculations. The corrected notice includes the missing exhibits.

### Case 2:23-cv-02186-SHL-cgc Document 102 Filed 06/13/24 Page 2 of 2 PageID 1607

In this district, the Local Rules require parties to submit an affidavit or declaration of counsel detailing the number of hours spent on each aspect of the case and an affidavit or declaration from another attorney in the community, who is not otherwise involved in the case, setting out the prevailing rate in the community for similar services. L.R. 54.1(b)(1)–(2).

MAA has not complied with either of the Local Rules requirements. Although Mills's declaration outlines the work done in this case (<u>id.</u> at PageID 1602–04), it does not detail the number of hours spent on each aspect of the case. More problematic, the declaration lumps together the work done by attorneys, litigation technology professionals, and paralegals, making it impossible for the Court to determine whether the fees charged are reasonable. MAA also has not submitted a declaration from another attorney in the community that sets out the prevailing rate in the community for similar services, as required under the Local Rules.<sup>2</sup>

Because of these deficiencies, MAA's notice is insufficient. Plaintiff shall supplement its notice to remedy these deficiencies within fourteen days of the entry of this Order. In so doing, MAA need not provide its detailed billing records, but it must differentiate among the hours worked by attorneys, litigation technology professionals, and paralegals, as well as their accompanying rates. MAA shall also file a declaration from another attorney in the community that speaks to the prevailing rate of the work completed, consistent with the Local Rules.

IT IS SO ORDERED, this 13th day of June, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

<sup>&</sup>lt;sup>2</sup> Although MAA submitted in its notice a second declaration from Eugenia McGown, its Senior Vice President and Chief Litigation Counsel, that declaration does not appear to have been submitted for this purpose and would be insufficient if it were.

Case 2:23-cv-02186-SHL-cgc	Document 103	Filed 06/21/24
-	PageID 1631	

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
V.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

### **ORDER ADDRESSING EMAIL TO THE COURT**

On June 13, <u>pro se</u> Defendant Dennis Michael Philipson sent an email to the Court's ECF mailbox. (See Attachment 1 ("Philipson Email").) The Philipson Email purports to "inquire about the progress of the current proceedings, as referenced in the attached order," and includes, among other things, an attachment of the Court's June 13, 2024 Order Requiring Supplementation, in which the Court ordered Plaintiff Mid-America Apartment Communities, Inc. ("MAA") to supplement its notice of damages with certain information. (See ECF No. 102.) In the Philipson Email, he indicates that he "would like to get this over with, pay the bill, and move on." (See Philipson Email.)

As to the "progress of the current proceedings," MAA's deadline to submit its supplementation is June 27, 2024. Upon the date of that filing, Mr. Philipson will have fourteen days in which to file a response to the supplementation, consistent with the Local Rules. (See LR 7.1.) Following the filing of those documents, or the expiration of the deadlines, the Court will rule, via written order, on the damages that MAA is entitled to and will enter a Judgment

### Case 2:23-cv-02186-SHL-cgc Document 103 Filed 06/21/24 Page 2 of 8 PageID 1632

closing the case. At that point, the case will be over, Mr. Philipson can pay any bill due MAA, and move on.

There are other issues raised in the Philipson Email, including multiple matters that are not before this Court. The first of those is Mr. Philipson's allegation that he has been harassed by MAA, its counsel, employees, and contractors, which he has reported to "the Ethics Board, the Judicial Board, the Sixth Circuit, the Circuit Executive, and the FBI." (See Philipson Email.) Mr. Philipson has not petitioned the Court for any relief related to these issues, whether in the form of a counter-claim in this matter or in a separate lawsuit. Thus, the Court has no power to resolve any of those disputes. See Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. – —, 2024 WL 2964140, at \*5 (2024) (explaining that "[t]he case or controversy requirement limits the role of the Federal Judiciary in our system of separated powers" and "federal courts do not issue advisory opinions about the law").

The second issue Mr. Philipson raises that is not before the Court relates to his assertion that, in April 2021, he made whistleblowing allegations regarding "potential antitrust violations, accounting irregularities, securities compliance issues, and many other legal issues associated with MAA," and that "[t]he gravity of these submissions reflects severe legal concerns that warrant prompt and thorough judicial consideration." (Id.) Just as Mr. Philipson's reports of harassment are not a matter being adjudicated before this Court, the same is true of his whistleblowing claims.

Finally, the last issue Mr. Philipson raises that is not before this Court is his reference to the "FBI raid on antitrust issues with RealPage and Cortland Property Management in Atlanta," which he asserts leads to "the urgency for a transparent resolution" of this matter being "heightened." (<u>Id.</u>) Although he contends that "[t]hese matters affect the parties directly

2

### Case 2:23-cv-02186-SHL-cgc Document 103 Filed 06/21/24 Page 3 of 8 PageID 1633

involved and hold broader implications for regulatory and compliance standards within the industry" (id.), Mr. Philipson does not offer any support as to how any of those matters implicate his trademark infringement and his harassment of MAA and its employees, which form the basis of MAA's complaint against him, and for which the Court has already found him liable. MAA or any other entity's adherence to regulatory and compliance standards in the apartment rental industry are not issues before this Court, which is constrained to resolve the case and controversies before it. See U.S. Const. art III.

The Philipson Email concludes by identifying what he suggests is a potential conflict of

interest because one of the undersigned's judicial law clerks formerly worked at the same law

firm that represents MAA. Mr. Philipson writes:

I wish to bring to your attention a potential conflict of interest concerning Mr. Michael Kapellas, who has previously been employed by Bass, Berry & Sims PLC—the counsel representing the opposing side. Under the American Bar Association Model Rules of Professional Conduct, specifically Rule 1.12, former judges, arbitrators, mediators, or other adjudicative officers are required to avoid participation in matters where they had a prior involvement unless all parties give informed consent. Given Mr. Kapellas' association with a party's legal team, an assessment for potential recusal seems prudent to uphold the integrity of the proceedings. I trust you will consider this matter with the utmost seriousness.

(Philipson Email.) Mr. Philipson goes on to ask "whether Tennessee law supports a similar

stance on such conflicts of interest, or if a recusal is deemed necessary in this context?" (Id.)

Mr. Philipson's question implicates both the Model Rules as well as the Tennessee Rules

of Professional Responsibility, as well as other authorities. First, Rule 1.12(a) of the Model

Rules of Professional Conduct provides the following:

Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

Tennessee's Rules of Professional Responsibility include a provision of the same number

that copies, almost verbatim, the Model Rule:

Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk or staff attorney to such a person or as an arbitrator, unless all parties to the proceeding give informed consent, confirmed in writing.

Tenn. Sup. Ct. R. 1.12(a), RPC.<sup>1</sup>

The Court and the licensed lawyers in its employ are governed by the rules of professional conduct. Judicial law clerks are also governed by the Code of Conduct for Judicial Employees (the "Code of Conduct"). However, the Model Rules, Tennessee's Rules of Professional Conduct, and the Code of Conduct are not implicated here.

As a starting point, the Model Rules and Tennessee's Rules both focus on the impropriety of a judicial officer, including a law clerk, moving from a role in the judiciary to a role in which he represents someone whose matter he handled while in the judiciary. There is no such allegation here, as the law clerk in question followed the opposite path, i.e., from private practice to the judiciary. Moreover, as a law clerk, he is an employee of the federal government, and, as such, is prohibited from engaging in the private practice of law. (See Code of Conduct § 320, Canon 4D (explaining that a judicial employee's practice of law is strictly limited to acting prose, performing routine legal work incident to the management of his or his family's personal

<sup>&</sup>lt;sup>1</sup> Rule 1.12(d), which is the same in both the Model Rules and the Tennessee Rules, provides that "[a]n arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party."

### Case 2:23-cv-02186-SHL-cgc Document 103 Filed 06/21/24 Page 5 of 8 PageID 1635

affairs, performing legal work during the course of his service in the military reserves, and providing pro bono legal service in civil matters, with certain limitations)). The law clerk's involvement in this matter in no way implicates either version of Rule 1.12.

The same is true of the Code of Conduct, which offers guidance governing conflicts of interest. It provides:

A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

Code of Conduct § 320, Canon 3F(1).

The law clerk's affiliation with the law firm representing MAA ceased in August 2020 and he has had no affiliation with the firm since then. This matter was filed in April 2023, when he was employed as a law clerk for another judge in this district. He had no knowledge of the case until he began working for the undersigned in August 2023, and is in no way personally or financially affected by the outcome in this matter, no matter what it may be. There is no conflict of interest under this provision of the Code of Conduct.

Canon 3F(2)(a) contains additional restrictions for certain judicial employees, including

law clerks. That provision explains that,

A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

 (i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; Case 2:23-cv-02186-SHL-cgc

Document 103 Filed 06/21/24 Page 6 of 8 PageID 1636

- (ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter (provided that the prohibition relating to the previous practice of law does not apply if he or she did not work on the matter, did not access confidential information relating to the matter, and did not practice in the same office as the lawyer), or he, she, or such lawyer has been a material witness;
- (iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;
- (iv) he or she, a spouse, or a person related to either within the third degree of relationship (as defined above in § 310.30), or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;
- (v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

There is not a conflict under any of these provisions, either. As explained above, the law

clerk's affiliation with the law firm representing MAA ended almost four years ago<sup>2</sup> and more

<sup>&</sup>lt;sup>2</sup> The Court notes that it allows its former law clerks to appear before it after a one-year period of repose, a common length of time under these circumstances, and three times the amount of time that passed between the law clerk's last employment with MAA's law firm. <u>See, e.g., Duke v. Pfizer, Inc., United Div. of Pfizer Hosp. Prod. Grp.</u>, 668 F. Supp. 1031, 1036 (E.D. Mich. 1987), <u>aff'd</u>, 867 F.2d 611 (6th Cir. 1989) ("Regarding the intimate relationship between a judge and his law clerk, the prevailing view is that a one- or two-year period of repose is enough to cure any possible appearance of impropriety.") (citations omitted).

### Case 2:23-cv-02186-SHL-cgc Document 103 Filed 06/21/24 Page 7 of 8 PageID 1637

than two-and-a-half years before this case was filed. He has no bias concerning any of the parties here and neither he nor any family member stands to benefit from any of the Court's rulings in this matter. Any involvement of his in this case to date or going forward does not present any conflict under any of the provisions in the Code of Conduct.

Finally, to the extent that Mr. Philipson seeks the recusal of the undersigned from this matter, the statute that governs recusals illustrates that such a request is equally without foundation.

Under federal law, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The statute also provides specific circumstances in which disqualification is mandatory, including "[w]here [s]he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1).

"Disqualification is not based on the subjective view of a party; rather, the law imposes an objective standard: whether 'a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality." <u>United States v. Cail</u>, No. 3:18-CR-158KACDCP13, 2021 WL 665525, at \*1 (E.D. Tenn. Feb. 19, 2021) (quoting <u>United States v.</u> <u>Hartsel</u>, 199 F.3d 812, 820 (6th Cir. 1999)). While "a judge is obliged to disqualify himself when there is a close question concerning his impartiality, he has an equally strong duty to sit where disqualification is not required." <u>Id.</u> (quoting <u>United States v. Angelus</u>, 258 F. App'x 840, 842 (6th Cir. 2007)).

To the extent Mr. Philipson has moved for the undersign to recuse herself from this matter, there are not grounds to do so. A reasonable, objective person would not question the

7

### Case 2:23-cv-02186-SHL-cgc Document 103 Filed 06/21/24 Page 8 of 8 PageID 1638

undersigned's impartiality in these circumstances. It is true that, "[e]ven if the judge has no reason to recuse [himself] based upon [his] own circumstances, a law clerk's relationships might cause the impartiality of decisions from that judge's chambers in which the clerk participates reasonably to be questioned." <u>Xyngular Corp. v. Schenkel</u>, 160 F. Supp. 3d 1290, 1300 (D. Utah 2016). However, because the court concludes that the law clerk does not have a conflict of interest, it need not analyze whether a conflict is imputed to the court. <u>See id.</u> at 1301 n.29.

Consistent with the foregoing, there is no conflict of interest involving the undersigned or her law clerk. To the extent Mr. Philipson seeks the recusal of either, that request is **DENIED**.

IT IS SO ORDERED, this 21st day of June, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE Document 103-1 Filed 06/21/24 Page 1 of 62 PageID 1763

# **EXHIBIT 1**

Filed 06/21/24

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Cc:	<u>FCF_Judge Clayton; ECF_Judge Lioman, ECF_Judge McCulla, ECF_Judge York, ECF_Judge Mavs, ECF_Judge</u> (Instoff, ECF_Judge Clayton, Noble Blanchard@bassberry.com, instwilliams@bassberry.com, Imodenahae@bassberry.com; Jerdan.thomus@bassberry.com
Subject:	RE: Order and Judgment 2.23-cv-02186-SHL-cgc - Philipson
Dete:	Thursday, June 13, 2024 1.28-16 PM
Attachments:	mage001.009 mage003.000 show temp (11.odf 5.22-24 - Circulit Executive - Citizens for Ethics.odf

#### CAUTION - EXTERNAL:

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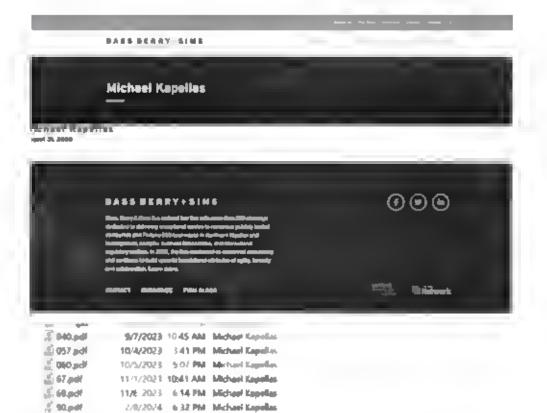
Hello,

I hope this message finds you well. I am writing to inquire about the progress of the current proceedings, as referenced in the attached order. I would like to get this over with, pay the bill, and move on. I am tired of the intimidation and harassment brought on persistently by MAA since 2021, their counsel, employees, and contractors. I have had to change my email address and phone number various times due to the constant harassment as well as unjust subpoenas brought on by MAA's counsel. I have reported these actions to the Ethics Board, the Judicial Board, the Sixth Circuit, the Circuit Executive, and the FBI. In April 2021, I provided significant documentation to MAA's whistleblower hotline and various regulatory agencies concerning potential antitrust violations, accounting irregularities, securities compliance issues, and many other legal issues associated with MAA. The gravity of these submissions reflects severe legal concerns that warrant prompt and thorough judicial consideration.

Given the complexities involved, including the recent FBI raid on antitrust issues with RealPage and Cortland Property Management in Atlanta, the urgency for a transparent resolution is heightened. These matters affect the parties directly involved and hold broader implications for regulatory and compliance standards within the industry. Furthermore, I wish to bring to your attention a potential conflict of interest concerning Mr. Michael Kapellas, who has previously been employed by Bass, Berry & Sims PLC the counsel representing the opposing side. Under the American Bar Association Model Rules of Professional Conduct, specifically Rule 1.12, former judges, arbitrators, mediators, or other adjudicative officers are required to avoid participation in matters where they had a prior involvement unless all parties give informed consent. Given Mr. Kapellas' association with a party's legal team, an assessment for potential recusal seems prudent to uphold the integrity of the proceedings. I trust you will consider this matter with the utmost seriousness.

Could you please provide clarity on whether Tennessee law supports a similar stance on such conflicts of interest, or if a recusal is deemed necessary in this context? Your prompt guidance on this matter is of utmost importance. I look forward to your response.

Mr. Kapellas authored various orders against me:



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3/19/2024 11:01 AM Michael Repeller

### Case 2:23-cv-02186-SHL-cgc

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Thank you for your assistance and for facilitating a fair and expeditious review of these pressing issues.

Best regards,

Dennis Philipson

**CAUTION - EXTERNAL EMAIL:** This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,				
Plaintiff,				
۷.				
DENNIS MICHAEL PHILIPSON,				
Defendant.				

Case No. 2:23-cv-02186-SHL-cgc

### ORDER REQUIRING SUPPLEMENTATION

Before the Court is Plaintiff Mid-America Apartment Communities, Inc.'s ("MAA") Notice of Filing of Corrected Statement of Damages with Exhibits, filed May 20, 2024. (ECF No. 101.)<sup>1</sup>

MAA's notice includes the Declaration of Paige Waldrop Mills, one of MAA's attorneys, in which she explains that the fees for the work done on the case total \$363,496.46. (ECF No. 101-3.) According to Mills's Declaration, the fees represent 627.5 hours of work on the matter, including work by attorneys, litigation technology professionals, and paralegals. (Id, at PageID 1601.) This amounts to a rate of almost \$580.00 per hour. MAA also incurred costs of \$7,893.95 during this litigation, which includes expenses such as service, filing, and recording fees and travel-related costs. (Sec id.)

<sup>&</sup>lt;sup>1</sup> MAA filed its original description of its damages on May 17, 2024. (See ECF No. 99.) That notice referenced, but did not include, two exhibits that supported its damages calculations. The corrected notice includes the missing exhibits.

In this district, the Local Rules require parties to submit an affidavit or declaration of counsel detailing the number of hours spent on each aspect of the case and an affidavit or declaration from another attorney in the community, who is not otherwise involved in the case, setting out the prevailing rate in the community for similar services. L.R. 54.1(b)(1)-(2).

MAA has not complied with either of the Local Rules requirements. Although Mills's declaration outlines the work done in this case (id. at PageID 1602–04), it does not detail the number of hours spent on each aspect of the case. More problematic, the declaration lumps together the work done by attorneys, litigation technology professionals, and paralegals, making it impossible for the Court to determine whether the fees charged are reasonable. MAA also has not submitted a declaration from another attorney in the community that sets out the prevailing rate in the community for similar services, as required under the Local Rules.<sup>2</sup>

Because of these deficiencies, MAA's notice is insufficient. Plaintiff shall supplement its notice to remedy these deficiencies within fourteen days of the entry of this Order. In so doing, MAA need not provide its detailed billing records, but it must differentiate among the hours worked by attorneys, litigation technology professionals, and paralegals, as well as their accompanying rates. MAA shall also file a declaration from another attorney in the community that speaks to the prevailing rate of the work completed, consistent with the Local Rules.

IT IS SO ORDERED, this 13th day of June, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

<sup>&</sup>lt;sup>2</sup> Although MAA submitted in its notice a second declaration from Eugenia McGown, its Senior Vice President and Chief Litigation Counsel, that declaration does not appear to have been submitted for this purpose and would be insufficient if it were.

Please find the exhibits detailed below:

Exhibit A: Letter from Sandy Garrett, Chief Disciplinary Counsel, Board of Professional Responsibility of the Supreme Court of Tennessee – No confirmation received regarding the receipt of the materials.

Exhibit B: Docket 2-24-cv-02199-SHL-atc, Involving Michael Kapeilas and Paige Mills.

Exhibit C: Metadata indicating Michael Kapellas as the author/creator of several orders against me.

Exhibit D: Court Order

Exhibit E: Altered subpoena, resulting in my unjust designation as a defendant in this case without evidence or ethically obtained evidence. Despite my explicit mention during a call with the judge and in court documents, neither the judge nor the law clerk addressed this issue.

Exhibit F: Narrative of Docket 2-23-cv-02186-SHL-cgc.

In light of these considerations, I assert that this FOIA request meets the criteria for expedited processing as outlined in 5 U.S.C. § 552(a)(6)(E)(i)(ii). The potential loss of substantial due process rights and the urgent need to restore public confidence in the integrity of judicial proceedings make it imperative that this request be processed as quickly as possible.

Sincerely,

**Dennis Philipson** 

### Page 8 of 62

# **Exhibit A**

### Doo Crew

From:	Mikey D <mikeydphilips@gmail.com></mikeydphilips@gmail.com>
Sent:	Friday, April 19, 2024 2:43 PM
To:	Sandy Garrett
Cc:	May Bear
Subject:	Re: Answers and Confirmation Regarding Complaint Closures 2024-10042-COMP & 2024-10043-COMP
Attachments:	4-2-24 HUD - FYI - Civil Rights Complaint - Western Tennesee Court.pdf; Meta Data Michael Kapellas.png

### Dear Ms. Garrett,

Thank you for your correspondence. I have received information regarding Paige Mills via email and postal mail; however, it appears that documentation concerning Mr. Kapallas has not been adequately addressed. Upon reflection, I cannot precisely recall the timeline of my complaint submission against him. Despite this, I had anticipated that a review of my case docket would clearly highlight the existing conflict of interest. This should become extremely obvious once you examine the docket, review the metadata, and piece the information together. Given that my complaint about Paige Mills was not taken seriously, I felt compelled to escalate my concerns to the DOJ, Judicial Board and the Circuit Executive.

Enclosed are some of the most recent documents relevant to the case. Subject to file size limitations, I plan to send additional materials in a follow-up email.

Dennis Philipson

On Fri, Apr 19, 2024 at 2:23 PM Sandy Garrett <sgarrett@tbpr.org> wrote:

Dear Mr. Phillpson: In response to your email received today, your first complaint against Paige Mills was administratively dismissed on August 31, 2023 since it concerned your pending civil litigation in *Mid-America Apartment Communities Inc. V. Dennis Philipson.* You subsequently submitted additional information and the Board of Professional Responsibility (the Board) emailed you on September 18, 2023 advising that your complaint against Paige Mills would remain dismissed.

On April 18, 2024, the Board notified you by email that your complaint against Michael Kapellas was closed due to no supporting documentation. The Board's on-line complaint form has a required field that all Complainants acknowledge their " understanding that [their] complaint cannot be processed until documents reflecting the attorney's representation and/or documents supporting [their] complaint are received by the Board within 30 days of submission of this complaint." Although no documentation was submitted by you in support of your complaint against Michael Kapellas, Board staff did review and consider documentation previously submitted in support of your complaints against Paige Mills. If you have additional documentation not previously submitted in support of your complaint against Michael Kapellas, the Board will review and consider that documentation.

Filed 06/21/24

Page 10 of 62

Chief Disciplinary Counsel

Board of Professional Responsibility

of the Supreme Court of Tennessee

10 Cadillac Drive, Suite 220

Brentwood, TN 37027

Phone: 1-615-361-7500, ext. 211 or 1-800-486-5714

Fax: 1-615-367-2480

Email: sgarrett@tbpr.org

From: Mikey D <<u>mikeydphilips@gmaif.com</u>> Sent: Friday, April 19, 2024 9:47 AM To: Complaints - Board of Professional Responsibility <<u>complaints@tbpr.org</u>> Cc: Steven Christopher <<u>schristopher@tbpr.org</u>>; Sandy Garrett <<u>sgarrett@tbpr.org</u>>; Dana Dunn <<u>ddupn@tbpr.org</u>>; Melissa Boyd <<u>Mboyd@tbpr.org</u>>; Mike Brett <<u>mbrett@tbpr.org</u>>; Maureen Hughes <<u>mhughes@tbpr.org</u>>; Elleen Burkhalter Smith <<u>esmith@tbpr org</u>>; Tiffany Tant-Shafer <<u>ttantshafer@tbpr.org</u>>; Russ Willis <<u>rwillis@tbpr.org</u>> Subject: Answers and Confirmation Regarding Complaint Closures 2024-10042-COMP & 2024-10043-COMP

Dear Board of Professional Responsibility,

I am somewhat perplexed by the correspondence I received yesterday from the Board. It was my understanding that the Board did not directly handle cases and that my course of action would be to address the judge directly, despite the Judge's law clerk displaying unethical behavior and authoring orders on the judge's behalf, the last, threatening to issue a warrant for my arrest on April 15, 2024.

I am writing to you with a need for clarity and resolution regarding the unexpected closure of my complaints, numbered 2024-10042-COMP and 2024-10043-COMP, against Paige Waldrop Mills and Michael Paul Kapellas, respectively. The notification of closure due to alleged insufficient documentary submission within a specified 30-day window not only surprised me but also brought to light a serious communication gap in our

interactions. Given the gravity of the allegations and the consequential impact on justice, this matter demands immediate attention.

I find it Imperative to highlight the seriousness of the Judicial misconduct involved in my complaints. There were substantial unethical practices by several courthouse members, including Michael Kappalas, a Judicial Law Clerk formerly associated with Bass, Berry & Sims PLC. His role in authoring and signing Judge Lipman's orders, coupled with a discernible bias against me, raises severe ethical concerns. Additionally, there have been multiple violations of both the attorney code of conduct and the federal and local rules of civil litigation. I am compelled to express my belief that multiple court employees were complicit in the unethical and biased treatment directed against me. This systemic issue exacerbates my concerns and underscores the necessity for a comprehensive investigation. The depth and breadth of these infractions cannot be understated.

In light of this, I urgently request the following:

- Immediate Clarification and Rectification: When and how was I informed about the requirement to submit additional documentation within a 30-day period? This crucial piece of information seemingly never reached me, and I question the fairness of closing my complaints based on this premise.
- 2. Demand for Formal Proceedings: Given the significant documentation I possess that evidences serious ethical violations, I insist on a thorough investigation into my complaints against Paige Waldrop Mills and Michael Paul Kapellas. The board's comprehensive procedure for handling complaints, from CAP's informal mediation to formal disciplinary proceedings, must be leveraged to ensure justice and accountability.
- Formal Confirmation of Complaint Closure: It is imperative that I receive formal confirmation that my
  complaints have been fully investigated and subsequently closed. This is not merely a procedural
  request but a necessary step for transparency and my understanding of the Board's decision-making
  process.

The ethical integrity of our legal system is at stake, and the allegations I bring forth are of a nature that cannot and should not be dismissed without rigorous scrutiny. I seek not guidance but definitive answers and actions that reflect the Board's commitment to upholding the highest standards of legal professionalism and ethical conduct.

Your prompt and detailed response to these pressing concerns is not only expected but essential.

Sincerely,

Dennis Philipson

Please be advised that information relating to the investigation of complaints is confidential and privileged as provided in Tennessee Supreme Court Rule 9, Section 32 Document 103-1 Filed PageID 1774

# Exhibit B

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

AMERICAN CLOTHING EXPRESS, INC., PORTIA & SCARLETT, LLC, and P&S AUS PTY LTD,

Plaintiffs,

٧.,

JOVANI FASHION, LTD.,

Defendant.

No. 2:24-cv-02199-SHL-atc

### ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT

Before the Court is Defendant Jovani Fashion, Ltd.'s ("Jovani") Unopposed Motion and

Memorandum for Extension of Time to Respond to Plaintiffs' Complaint, filed April 16, 2024.

(ECF No. 19.) In the motion, Jovani seeks to extend the deadline for its responsive pleading

from April 23, 2024, to May 10, 2024. (Id. at PageID 163-64.) Jovani's counsel indicates that

they have recently been retained in this matter and that they need an extension to allow sufficient

time to investigate and evaluate Plaintiffs' claims. (Id.)

For good cause shown, the motion is GRANTED. Defendant shall have until May 10,

2024, in which to file its responsive pleading.

IT IS SO ORDERED, this 16th day of April, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

AMERICAN CLOTHING EXPRESS, INC., PORTIA & SCARLETT, LLC, and P&S AUS PTY LTD,

Plaintiffs,

v.

JOVANI FASHION, LTD.,

Defendant.

No. 2:24-cv-02199-SHL-atc

### ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR LIMITED AND EXPEDITED DISCOVERY AND SETTING SCHEDULING CONFERENCE

Before the Court is Plaintiff American Clothing Express, Inc., Portia & Scarlett, LLC, and P&S Aus Pty Ltd's Motion for Limited and Expedited Discovery, filed April 1, 2024. (ECF No. 11.) In the motion, Plaintiffs seek certain limited discovery from Defendant Jovani Fashion, Ltd., "that would help the parties present a full picture of all relevant conduct and information to this Court during the hearing on Plaintiffs' Motion for Preliminary Injunction." (Id. at PageID 122.) On April 15, 2024, Defendant filed its response to the motion, in which it indicated that the Parties "have conferred regarding the Motion and, subject to the Court's approval, have agreed on certain expedited discovery to be conducted by both plaintiffs and defendant." (ECF No. 16 at PageID 152.)

The Court GRANTS THE MOTION IN PART, consistent with that agreement and the following terms:

 Defendant shall serve responses to Plaintiffs' First Request for Production of Documents, which were attached to Plaintiffs' Motion for Limited and Expedited Discovery as Exhibit A, by May 20, 2024.

 Defendant shall be permitted to serve Requests for Production related to the issues presented in Plaintiffs' motion for preliminary injunction by April 22, 2024, which requests shall be answered by Plaintiffs within thirty days of service thereof.

 Plaintiffs and Defendant shall cooperate in the scheduling of depositions pursuant to Federal Rule of Civil Procedure 30(b)(6) promptly after responses to the above-referenced requests for production of documents are served.

The Court will set a briefing schedule on Plaintiffs' Motion for Injunctive Relief and a Preliminary Injunction as well as all other deadlines in this matter at an in-person scheduling conference to be held at 11:00 a.m. Thursday, May 30, 2024.

The remaining relief sought in Plaintiffs' motion, including the request to issue Letters of Request for International Judicial Assistance, is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED, this 15th day of April, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE Document 103-1 Filed PageID 1778

# Exhibit C

Michael Kapellas Orders:

40 - 9/7/2023 - ORDER DENYING MOTION TO RESCHEDULE SCHEDULING CONFERENCE

57 - 10/4/2023 - ORDER REQUIRING PLAINTIFF TO FILE NOTICE

60 – 10/5/2023 - ORDER DENYING MOTION TO COMPEL AND MOTION FOR EXPEDITED DISCOVERY OF SUBPOENA RESPONSES AND ITEMIZATION OF DAMAGES

67 – 11/1/2023 - ORDER GRANTING MOTION FOR PROTECTIVE ORDER (Same day as Attomey General lawsuit against RealPage and MAA announced)

69 – 11/6/2023 - ORDER DENYING MOTION TO DISMISS (appears to be written by opposing counsel, against local court rules)

90 - 2/8/24 - ORDER FOR DEFENDANT TO SHOW CAUSE

91 - 2/13/24 - ORDER FOR DEFENDANT TO SHOW CAUSE

94 – 3/19/24 - ORDER DENYING AS MOOT PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS, GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, DENYING DEFENDANT'S REQUEST TO CONTINUE MEDIATION, REQUIRING DEFENDANT TO RESPOND TO MOTION FOR SANCTIONS OF JUDGMENT AND PERMANENT INJUNCTION, AND FINDING DEFENDANT IN CONTEMPT (Stating an arrest warrant will be issued for me and I will be held until I face contempt charges).

4/15/24 – The Court will move forward on ruling on ECF <u>92</u> Plaintiff's Motion for Sanctions of Judgment and Permanent Injunction.

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### Case 2:23-cv-02186-SHL-cgc

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# **Exhibit D**

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## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	)	
Plaintiff,		
ν.	) Case No. 2:23-cv-02186-SHL-cj	g¢
DENNIS MICHAEL PHILIPSON,		
Defendant.	) .	

# ORDER DENYING AS MOOT PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS, GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, DENYING DEFENDANT'S REQUEST TO CONTINUE MEDIATION, REQUIRING DEFENDANT TO RESPOND TO MOTION FOR SANCTIONS OF JUDGMENT AND PERMANENT INJUNCTION, AND FINDING DEFENDANT IN CONTEMPT

Before the Court are multiple motions. First is Plaintiff Mid-America Apartment Communities, Inc.'s ("MAA") Motion for Contempt and Sanctions for Failure to Respond to Subpoena (the "Motion for Contempt"), filed June 14, 2023. (ECF No. 19.) In the Motion for Contempt, Mid-America asserts that <u>pro se</u> Defendant Dennis Michael Philipson, a former MAA employee, was served with a subpoena on April 11, 2023, but "failed to respond to the Subpoena or timely file objections to the documents it seeks." (Id, at PageID 276.) MAA contends that this failure warrants holding him in contempt and awarding its attorneys' fees.

Second is MAA's motion for preliminary injunction ("Motion for Preliminary Injunction"), filed January 25, 2024. (ECF No. 81.) The Court set a status conference regarding the motion for Thursday, February 8, 2024. (ECF No. 88.) Mr. Philipson failed to attend the status conference, prompting the Court to enter an Order for Defendant to Show Cause, by February 22, 2024, as to "why he did not appear for the status conference and why the Court

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 27 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 2 of 22 PageID <pageID>

should not hold him in contempt." (ECF No. 90 at PageID 1473.) Mr. Philipson did not respond to the Order.

Mr. Philipson also missed his deadline to respond to the Motion for Preliminary Injunction, prompting the Court to enter a second show cause order. (ECF No. 91.) That Order gave Mr. Philipson twenty-one days to demonstrate "whether there is a dispute as to any of the facts in MAA's motion, and to otherwise respond to the motion." (Id, at PageID 1476.) The Court warned Mr. Philipson that if he failed to respond to the "Order, in writing and on the docket by March 5, 2024, the Court will consider the facts in the motion undisputed, will not conduct an evidentiary hearing, and will proceed to evaluate the questions of law at issue in the motion." (Id.) Mr. Philipson never responded to that Order or otherwise respond to the motion for preliminary injunction.

The final motion is MAA's Motion for Sanctions of Judgment and Permanent Injunction Against Philipson ("Motion for Permanent Injunction"), filed March 6, 2024. (ECF No. 92.) That motion seeks default judgment against Mr. Philipson, a permanent injunction and damages.<sup>1</sup>

For the following reasons, MAA's Motion for Contempt and Sanctions for Failure to Respond to Subpoena is DENIED AS MOOT and its motion for preliminary injunction is GRANTED IN PART AND DENIED IN PART, consistent with the terms described in this Order. The Court also FINDS MR. PHILIPSON IN CONTEMPT based on his repeated

<sup>&</sup>lt;sup>1</sup> Local Rule 7.2(a) requires responses to most types of motions, including motions for permanent injunctions, within fourteen days. An additional three days are added when service is conducted by mail (see Fed. R. Civ. P. 6(d)), and, if the response is due on a Sunday, the deadline extends to the next day (see Fed. R. Civ. P. 6(a)(2)(C)). MAA filed its Motion for Permanent Injunction on March 6, 2024. Under the applicable rules, Mr. Philipson's response is due March 25, 2024.

flouting of this Court's Orders and rules, and sets a hearing on that finding, as is explained in more detail below.

Finally, Mr. Philipson is also **DIRECTED** to respond to the Motion for Permanent Injunction by his deadline to do so. If Mr. Philipson fails to timely respond by his deadline, the Court will consider the motion undisputed and will rule accordingly.

#### BACKGROUND

MAA originally filed its lawsuit against unnamed Defendants John Does #1-2 on April 3, 2023, alleging claims under the Lanham Act, 15 U.S.C. § 1051 <u>et seq.</u>, the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), common law infringement and unfair competition and the Tennessee Consumer Protection Act, Tennessee Code Annotated § 47-18-104 <u>et seq.</u> (ECF No. 1 at PageID 1.) On April 11, 2023, MAA served Mr. Philipson with a subpoena to produce six categories of documents. (See ECF Nos. 19 & 19-1.) Mr. Philipson filed a motion to quash the subpoena on April 17, 2023. (ECF No. 10.)<sup>2</sup> The Court entered an order on May 16, 2023, denying the motion to quash. (ECF No. 15.)

On June 13, MAA filed its Amended Complaint, which replaced the John Doe Defendants with Mr. Philipson. (ECF No. 16.)<sup>3</sup> The Amended Complaint alleges that Mr. Philipson, following his resignation from MAA, engaged in a variety of tortious activities, mostly online, as part of a "long and relentless vendetta against MAA." (ECF No. 16 at PageID 177.) The claims in the Amended Complaint include those set forth in the original complaint, as well as additional claims for, among other things, unfair competition, misappropriation,

 $<sup>^2</sup>$  Mr. Philipson's motion to quash was also filed in the miscellaneous case 2:23-mc-00015-SHL-atc.

<sup>&</sup>lt;sup>3</sup> A summons was issued the day the Amended Complaint was filed (ECF No. 18), and Mr. Philipson was served the next day (ECF No. 20).

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 29 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 4 of 22 PageID <pageID>

deceptive trade practices, fraudulent misrepresentations, defamation, tortious interference with prospective business relationships, deceit, negligence <u>per se</u> related to acts of cyber harassment, and claims under the Tennessee Personal and Commercial Computer Act of 2003. (See id.)

The next day, MAA filed the Motion for Contempt related to the Rule 45 subpoena for documents, seeking a contempt finding against Mr. Philipson, as well as an award of attorneys' fees as a sanction under Federal Rule of Civil Procedure 37(a)(5)(A). (ECF No. 19.) Mr. Philipson also did not respond to the Motion for Contempt, prompting the Court to enter an Order to Show Cause on July 10, 2023. (ECF No. 21.) Mr. Philipson responded to that Order on July 31, 2023. (ECF No. 22.) His response provided background information as to his previous interactions with MAA and asserted that the case should be dismissed. (Id. at PageID 299.) Only a portion of his filing responded to the Motion for Contempt; Mr. Philipson appeared to assert that he misplaced a thumb drive containing materials that might have been responsive to the subpoena. (Id.)

The Court addressed the Motion for Contempt with the Parties at the September 11, 2023 scheduling conference. (ECF No. 45.) Then, on October 4, 2023, the Court entered an Order Requiring the Plaintiff to File Notice in which it directed MAA to clarify what, if any, issues remained outstanding regarding the Motion for Contempt. (ECF No. 57.)

Philipson filed a notice the next day in which he asserted that he "conducted a thorough review of all documents and emails in my possession to find anything responsive to Mid-America's subpoena" and the only potentially relevant material was a screenshot from the LinkedIn page of Robert Delpriore, counsel for MAA." (ECF No. 58 at PageID 579.) He declared that he has "no additional documents in my possession that are responsive to the subpoena." (Id.)

#### Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 30 of 62 Case 2:23-cv-02186-SHL-cgc Doctroent 04/7 Piled 03/19/24 Page 5 of 22 PageID cpageID>

MAA filed a notice on October 11, 2023, standing by its Motion for Contempt. (ECF No. 62.) MAA asserts that, "despite [Mr. Philipson's] representations and having nearly six months to do so, Mr. Philipson has failed to produce responsive documents and thus is in contempt of this Court's subpoena." (Id. at PageID 596.) MAA "requests that this Court find that Defendant is in contempt of the subpoena, order him to comply with it, and award Plaintiff its reasonable attorney fees for bringing the instant motion." (Id.)

On November 8, 2023, the Court entered an Order referring the matter to Chief Magistrate Judge Tu M. Pham for mediation. (ECF No. 71.) Judge Pham held a status conference on November 14, 2023, which Mr. Philipson failed to attend, and then held the mediation on November 29, 2023, which Mr. Philipson also did not attend. (ECF Nos. 72 & 74.) Three days later, Mr. Philipson filed a request seeking to continue the mediation, explaining that he "inadvertently missed a mediation session" and "respectfully request[ed] that any mediation be deferred until early February." (ECF No. 75 at PageID 753.)<sup>4</sup> The next day, December 3, 2023, Mr. Philipson filed a motion and amended motion for reasonable accommodations. (ECF Nos. 76 & 77.) MAA opposed the motion. (ECF No. 79.)<sup>5</sup>

MAA's Motion for Preliminary Injunction—whose facts are now undisputed as set forth below—outlines the myriad activities Mr. Philipson has engaged in that warrant the extraordinary relief that it seeks. The behaviors include, among other things, publishing

<sup>&</sup>lt;sup>4</sup> Mr. Philipson's request is not well taken and is **DENIED**. Mr. Philipson's request for continuation fails to justify his repeated waste of judicial resources, does not sufficiently explain his absence from either event and, given his behavior to this point in the litigation, the Court is not convinced that Mr. Philipson would attend another mediation if one were set.

<sup>&</sup>lt;sup>5</sup> Both of those motions were sealed after they were submitted, per an email request from Mr. Philipson, in which he also asserted that "ADA laws may not apply to federal courts" and "kindly request[ed] that you forward this request to the appropriate person responsible for assisting with accommodation requests within the Tennessee court system." The Court did not take any further action with Mr. Philipson's request, and considers the motions withdrawn.

## Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 31 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 6 of 22 PageID <pageID>

defamatory and fraudulent and deceitful materials about it and its employees via mass emails and elsewhere, electronically stalking them, and applying for credit cards in the names of MAA's counsel. For instance, in early January 2024, Mr. Philipson sent multiple emails to thousands of people that contained misrepresentations and innuendo about MAA. (See ECF Nos. 83-1, 83-2, 83-3.)<sup>6</sup> Mr. Philipson also left numerous bizarre Google reviews of businesses located near MAA's headquarters and the homes of its employees, which included references to personal information about those employees "that was not generally known and indicated to them that Philipson was listening in on conversations, possibly reading their mail and emails, and stalking them, either via the computer or in person." (ECF No. 82 at PageID 906.)

#### ANALYSIS

# I. Motion for Contempt

MAA issued a subpoena to Mr. Philipson pursuant to Federal Rule of Civil Procedure 45 before he was a named party in this action. Rule 45 governs subpoenas and allows a party to command a nonparty to produce documents or tangible things. Fed. R. Civ. P. 45(a)(1). Under the Rule, the court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." Fed. R. Civ. P. 45(g). Ultimately, Rule 45(g) provides "[t]he only authority in the Federal Rules of Civil Procedure for the imposition of sanctions against a nonparty for failure to comply with a subpoena duces tecum." <u>Weems v. Omni Hotels Mgmt. Corp.</u>, No. 3:21-CV-00293, 2022 WL 989144, at \*1 (M.D. Tenn. Mar. 31, 2022).

<sup>&</sup>lt;sup>6</sup> Separately, one of MAA's attorneys was signed up for MAA's investor email alert, without her permission or request, which MAA asserts was done by Mr. Philipson. (ECF No. 82 at PageID 911.) One of the Court's law clerks has also been signed up for MAA's investor email alert without his permission or request.

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 32 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 7 of 22 PageID <pageID>

Whereas Rule 45 governs the issuance of subpoenas to non-parties, "[t]he Rules anticipate that production of documents and things from parties will be accomplished through Rule 34." <u>Elvis Presley Enters., Inc. v. City of Memphis, Tenn.</u>, No. 2:18-cv-02718-SHM-atc, 2020 WL 4015476, at \*12 (W.D. Tenn. July 16, 2020). <u>See also Reynolds & Reynolds Co., Inc.</u> <u>v. Alan Vines Auto. of Jackson, LLC</u>, No. 1:20-mc-0003-STA, 2020 WL 5797923, at \*7 (W.D. Tenn. Sept. 28, 2020) ("Generally speaking, a party can serve non-parties with requests for production by subpoena under Rule 45, and not through a Rule 34 request propounded on an actual party to the action.") (citations omitted).

The unusual procedural circumstances at play when MAA filed its Motion for Contempt must be considered in evaluating the motion. At the time MAA issued its subpoena to Mr. Philipson in April 2023, the Defendants were listed as John Doe 1 and 2. (See ECF Nos. 1 & 19-1.) MAA filed its amended complaint on June 13, 2023, naming Mr. Philipson as the lone Defendant. (ECF No. 16.) Had Mr. Philipson been a party to the case at the time MAA issued its subpoena, it is likely that MAA would have sought the documents under the discovery mechanisms applicable to parties. See e.g., Fed. R. Civ. P. 31–36.<sup>7</sup> In fact, in its Motion for

Courts that find Rule 45 appropriate for use against parties to a case typically do so with the caveat that the rule cannot be used to circumvent the discovery deadlines otherwise in place, as "[s]ubpoenas issued under Rule 45 are a discovery device subject to the same deadlines as other forms of discovery, including deadlines in a court's scheduling order." <u>Elvis Presley</u> <u>Enters., Inc. v. City of Memphis, Tenn.</u>, No. 2:18-cv-02718-SHM-dkv, 2020 WL 4015476, at \*12 (W.D. Tenn. July 16, 2020). The scheduling order deadlines are not implicated here.

<sup>&</sup>lt;sup>7</sup> Courts and legal scholars are split on whether Rule 45 subpoenas can be issued to parties to a case. <u>See, e.g., Olmstead v. Fentress Cnty., Tenn.</u>, No. 2:16-CV-00046, 2018 WL 6198428, at \*3 (M.D. Tenn. Nov. 28, 2018) (collecting cases to illustrate that the majority view is that Rule 45 can be used against parties and non-parties); <u>Baggett v. Schwan's Home Serv.</u>, <u>Inc.</u>, No. 3:04-CV-316, 2005 WL 8162577, at \*1 (E.D. Tenn. Oct. 31, 2005) (assuming, without deciding, that a Rule 45 subpoena could be served on a party, but noting that even "two of the leading treatises on federal civil procedure hold different views on the issue," citing Moore's Federal Practice and Wright & Miller's Federal Practice and Procedure).

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 33 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 8 of 22 PageID <pageID>

Permanent Injunction, MAA attached the first set of document requests it propounded upon Mr. Philipson on September 15, 2023 (ECF No. 92-3), which contained a significant amount of overlap with the document requests included in its earlier subpoena (see ECF No. 19-1), and MAA also indicated it submitted a second set of document requests upon Mr. Philipson on October 16, 2023 (ECF No. 92 at PageID 1479), which might have contained additional redundancies.

The Court is dubious that Mr. Philipson has produced all of the documents that might be responsive to the subpoena. However, given the circumstances here, which include the fact that Mr. Philipson became a party to the case after having received the subpoena, the overlapping nature of materials MAA sought through the subpoena and the document requests, the fact that a finding of contempt is the lone sanction available under Rule 45, as well as the fact that MAA can—and has sought—additional sanctions against Mr. Philipson for his failure to respond to the discovery requests propounded upon him after he became a party to this case in its Motion for Permanent Injunction, the Court **DENIES AS MOOT** MAA's Motion for Contempt. This ruling in no way excuses Mr. Philipson's failure to provide documents responsive to the subpoena to the extent that he had or has responsive documents, and makes no determination as to whether, or what, judgment or sanctions Mr. Philipson may be subject to under MAA's Motion for Permanent Injunction.<sup>8</sup> Mr. Philipson is also **ORDERED**, consistent with his

<sup>&</sup>lt;sup>8</sup> Mr. Philipson informed MAA's counsel that, "ever since the complaint was served to me by MAA" he "diligently ensured to preserve all pertinent information." (ECF No. 62-4 at PageID 613.) But it may be problematic if Mr. Philipson did not diligently preserve all pertinent information even <u>prior</u> to being served with the complaint. After all, Mr. Philipson was served with the subpoena on April 11, 2023, and, "[a]s a general matter, it is beyond question that a party to civil litigation has a duty to preserve relevant information, including ESI, when that party 'has notice that the evidence is relevant to litigation or . . . should have known that the evidence may be relevant to future litigation." John B. v. Goetz, 531 F.3d 448, 459 (6th Cir. 2008) (quoting Fujitsu Ltd. v. Fed. Express Corp., 247 F.3d 423, 436 (2d Cir. 2001)). Mr.

obligations under Local Rule 7.2(a)(2), to respond to MAA's Motion for Permanent Injunction by the March 25, 2024 deadline.

## **II.** Motion for Preliminary Injunction

Based on a number of claims, MAA also seeks a preliminary injunction. There are four factors the Court must balance when determining whether a plaintiff is entitled to a preliminary injunction: "(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant has shown that he or she would suffer irreparable harm if the preliminary relief is not issued; (3) whether the issuance of a preliminary injunction will cause substantial harm to third parties; and (4) whether the public interest would be served by the issuance of a preliminary injunction. <u>G.S. by & through Schwaigert v. Lee</u>, 560 F. Supp. 3d 1113, 1121 (W.D. Tenn. 2021) (citing <u>Sandison v. Mich. High Sch. Athletic Ass'n</u>, 64 F.3d 1026, 1030 (6th Cir. 1995)). The Court is not required to explicitly consider each of these factors if one is dispositive. <u>Robinson v. Tansley</u>, No. 2:23-cv-02589-SHL-atc, 2023 WL 6613099, at \*2 (W.D. Tenn. Oct. 10, 2023) (quoting <u>Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.</u>, 511 F.3d 535, 542 (6th Cir. 2007)).

MAA asserts in its Motion for Preliminary Injunction that "[t]he Court's immediate protection is necessary because Defendant's harassment, defamation, and deceit have been ongoing but now are sharply escalating." (ECF No. 82 at PageID 902.) According to MAA, Mr. Philipson has "taken steps to destroy MAA and its relationships with its employees and the

Philipson, though not yet a party to the lawsuit, was on notice that the evidence he had may be relevant to future litigation at least as of April 11, 2023, if not sooner. See In re Black Diamond Min. Co., LLC, 514 B.R. 230, 237 (E.D. Ky. 2014) (noting that an obligation to preserve evidence arises "when a party should have known that the evidence may be relevant to future litigation," which "can, and often does, happen earlier than when the actual lawsuit is filed.") (Thapar, J.) (citations omitted).

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 35 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 10 of 22 PageID <pageID>

community," and his "continuing and escalating stalking and cyber-harassment indicate a dangerous individual and MAA, its employees, and counsel seek protection from him." (Id.) To that end, MAA asserts that, "it has a likelihood of success on the merits of its claims for negligence per se for Philipson's repeated violations of the federal law that prohibits stalking (18 U.S.C. §§ 2261a), for common law deceit, and for defamation." (ECF No. 81 at PageID 890–91.)

Mr. Philipson failed to respond to the Motion for Preliminary Injunction, prompting the Court to issue its February 13 Order to Show Cause, warning Mr. Philipson that, absent a response, the facts as alleged in the motion would be deemed undisputed, leaving the Court to conduct a legal analysis of the claims therein. It does so now, evaluating the motion under the relevant four factors.

## A. Substantial Likelihood of Success on the Merits

MAA asserts that it is likely to succeed on the merits of its claims for negligence <u>per se</u>, deceit and defamation, based on Mr. Philipson's use of false and defamatory information in violation of the federal crime of cyberstalking, as well as his distribution of defamatory emails. (ECF No. 82 at PageID 915.) Each claim is considered below.

# 1. Negligence <u>Per Se</u>

MAA's claim for negligence <u>per se</u> is tied to its allegations that Mr. Philipson engaged in cyber harassment in violation of 18 U.S.C. § 2261A. (<u>Id.</u> at PageID 915–19.) That criminal statute prohibits the use of "any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that . . . places that person in

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 36 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 03/19/24 Page 11 of 22 PageID <pageID>

reasonable fear of the death of or serious bodily injury to a person," their immediate family member or their spouse or intimate partner. § 2261A(2)(A).<sup>9</sup>

Under Tennessee law, negligence <u>per se</u> is not a stand-alone cause of action, but instead "is a form of ordinary negligence that enables the courts to use a penal statute to define a reasonably prudent person's standard of care." <u>Rains v. Bend of the River</u>, 124 S.W.3d 580, 589 (Tenn. Ct. App. 2003) (citations omitted). The doctrine of negligence <u>per se</u> does not "automatically create[] a private negligence cause of action for the violation of every statute," and "arises when a legislative body pronounces in a penal statute what the conduct of a reasonable person must be, whether or not the common law would require similar conduct." <u>Id.</u> (citations omitted). "Plaintiffs in negligence per se cases must still establish causation in fact, legal cause, and damages." Id. (citations omitted).

MAA alleges that Mr. Philipson is liable for negligence <u>per se</u> for a variety of actions, including "stalk[ing] MAA employees by visiting and leaving dozens of creepy and strange reviews via the internet on establishments near their homes, including locations where the employee's children stay after school or visit frequently." (ECF No. 82 at PageID 916.) Those reviews contained references to information that Mr. Philipson "had no legitimate basis for knowing, other than by impermissibly stalking, following, or shadowing" those employees. (Id.) Mr. Philipson also set up social media accounts for MAA employees without their permission and used a computing device and the Internet to, among other things: attempt to breach MAA's

<sup>&</sup>lt;sup>9</sup> On its own, § 2261A does not create a private right of action. <u>See Hopson v.</u> <u>Commonwealth Att'ys Off.</u>, No. 3:12-CV-744-M, 2013 WL 1411234, at \*3 (W.D. Ky. Apr. 8, 2013) (collecting cases standing for the proposition that "[i]t is clear that § 2261A does not provide for a private cause of action or civil remedies").

#### 

systems, apply for credit cards in the names of one of MAA's attorneys and her husband, set up a website that infringed on MAA's intellectual property and create fake LinkedIn accounts to spread false and defamatory information about MAA and to confuse its customers and employees. (<u>Id.</u>)

MAA has demonstrated that it is likely to be able to show that Mr. Philipson's actions were the cause in fact and legal cause of the damages it and its employees sustained. His stalking has caused emotional harm to MAA's employees (see, e.g., Decl. of Jay Blackman (ECF No. 84)), and has caused MAA to incur significant costs, including having to purchase credit monitoring services for its employees and outside counsel, employing cyberstalking experts to trace Mr. Philipson activities, and incurring significant attorneys' fees to address Mr. Philipson's trademark infringement (ECF No. 82 at PageID 919). Moreover, MAA has demonstrated that, absent the extraordinary relief it seeks here, it, its employees and its counsel will continue to experience fear, intimidation, reputational damage and substantial emotional distress. Its likelihood of success on the merits of its negligence per se claim related to Mr. Philipson's violation of the federal cyberstalking laws is clear.

#### 2. Common Law Deceit

1.

Traditionally, Tennessee law defined common law fraud and deceit as follows:

When a party intentionally misrepresents a material fact or produces a false impression in order to mislead another or to obtain an undue advantage over him, there is a positive fraud. The representation must have been made with knowledge of its falsity and with a fraudulent intent. The representation must have been to an existing fact which is material and the plaintiff must have reasonably relied upon that representation to his injury.

<u>First Nat'l Bank of Louisville v. Brooks Farms</u>, 821 S.W.2d 925, 927 (Tenn. 1991.) Today, the "common-law claim for intentional misrepresentation is the successor to the common-law action for deceit." <u>Hodge v. Craig</u>, 382 S.W.3d 325, 342 (Tenn. 2012) (citing <u>First Nat'l Bank of</u>

Louisville, 821 S.W.2d at 927). The elements of intentional misrepresentation are similar to

common law deceit and include the following:

(1) that the defendant made a representation of a present or past fact; (2) that the representation was false when it was made; (3) that the representation involved a material fact; (4) that the defendant either knew that the representation was false or did not believe it to be true or that the defendant made the representation recklessly without knowing whether it was true or false; (5) that the plaintiff did not know that the representation was false when made and was justified in relying on the truth of the representation; and (6) that the plaintiff sustained damages as a result of the representation.

Hodge, 382 S.W.3d at 343.

Here, MAA asserts that Mr. Philipson is liable for common law deceit based on his purchase of an internet domain, falsely representing himself as "Piper and Savage," and emailing more than 1,200 MAA employees with false and defamatory information that produced an untold number of false impressions. (ECF No. 82 at PageID 920–21.) MAA asserts that Mr. Philipson made the representations with fraudulent intent and that "there is imminent danger" that the employees who have received these emails "will rely on these statements, causing them to leave or lose confidence in the company, which can be devastating to MAA's reputation and employee relationships." (Id. at 921.)

What MAA has failed to demonstrate, however, is that it relied upon the false representations to its detriment, a necessary element of its common-law fraud and deceit claim. Its employees might have relied upon the misrepresentations, and their reliance on those misrepresentations might damage the goodwill MAA enjoys. But that sort of damage is not the sort contemplated by a claim for deceit. As a result, MAA is unlikely to prevail on the merits of

its claims for common-law deceit, and its Motion for Preliminary Injunction is denied as to this claim.<sup>10</sup>

# 3. Defamation

Establishing a <u>prima facie</u> case of defamation under Tennessee law requires MAA to show that Mr. Philipson "published a statement; with knowledge that the statement is false and defaming to the other; or with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement." <u>Seaton v. TripAdvisor LLC</u>, 728 F.3d 592, 596–97 (6th Cir. 2013) (quoting <u>Sullivan v. Baptist Mem'l Hosp.</u>, 995 S.W.2d 569, 571 (Tenn. 1999)).

MAA asserts that multiple emails Mr. Philipson sent in early January 2024 included a series of misrepresentations and innuendo regarding MAA, its employees, and current and former employees of Bass, Berry & Sims, MAA's counsel in the case, satisfying each of the <u>prima facie</u> elements of defamation. (ECF No. 82 at PageID 921–22.) To the extent that those statements might be true, they are otherwise actionable because they imply facts that are not true, according to MAA. (<u>Id.</u> at PageID 922–23.)

Among other things, Mr. Philipson's emails falsely imply that MAA principals engaged in insider trading, committed securities fraud, antitrust violations, business fraud and safety violations, that its lease policies were linked to the death of one of its tenants, that he had a team prepared to offer additional information related to those and other allegations, that it lacked insurance coverage, that its mold and water remediation policies were insufficient, that it had insufficient safety measures and that its corporate structure was unlawful. (See ECF Nos. 83-1

<sup>&</sup>lt;sup>10</sup> The Court has not identified any activities that MAA seeks to enjoin Mr. Philipson from engaging in that are tied exclusively to its claim for common-law deceit.

## Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 40 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 15 of 22 PageID cpageID

& 83-2.) MAA declares that all of these statements are false and, given the Court's determination that MAA's factual assertions in its Motion for Preliminary Injunction have been deemed admitted, it is beyond cavil that the statements contained therein are defamatory. For the purposes of ruling on the Motion for Preliminary Injunction, the Court finds that Mr. Philipson published the false statements contained within the emails, that he had knowledge of their falsity and defamatory nature to MAA, or, at the very least, recklessly disregarded the truth of the statement or negligently failed to ascertain the truth of the statements contained in the emails.

MAA is likely to succeed on the merits of its defamation claim.<sup>11</sup>

## **B.** Irreparable Harms Shown

When determining whether to issue a preliminary injunction, the irreparable harm "factor is indispensable," as, "[i]f the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief now as opposed to at the end of the lawsuit." <u>D.T. v. Summer Cnty. Sch.</u>, 942 F.3d 324, 327 (6th Cir. 2019) (citation omitted). A plaintiff's harm from the denial of a preliminary injunction is irreparable if it is not fully compensable by monetary damages. <u>Overstreet v. Lexington-Fayette Urb. Cnty. Gov't</u>, 305 F.3d 566, 578 (6th Cir. 2002) (citing <u>Basicomputer Corp. v. Scott</u>, 973 F.2d 507, 511 (6th Cir. 1992)). At the same time, "an injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate." <u>Basicomputer Corp.</u>, 973 F.2d at 511.

<sup>&</sup>lt;sup>11</sup> As MAA points out, narrow injunctions against false and defamatory speech are permissible without contravening the First Amendment's general prohibition on prior restraints. <u>See, e.g., In re Conservatorship of Turner</u>, No. M2013-01665-COA-R3CV, 2014 WL 1901115, at \*20 (Tenn. Ct. App. May 9, 2014) (adopting the "modern rule" and holding "that defamatory speech may be enjoined after a determination that the speech is, in fact, false," explaining that, "because defamatory speech is not protected by the First Amendment, such an injunction does not violate the amendment's guarantee of free speech").

#### Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 41 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 41 of 62 case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 41 of 62 case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 41 of 62 case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 41 of 62 case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 16 of 22 PageID

Some, but not all, of the harms MAA seeks redress for are compensable by monetary damages. However, the reputational harm and the interference with customer relationships that MAA has suffered and will potentially continue to suffer in the absence of a preliminary injunction are difficult to quantify, and thus warrant the relief MAA seeks. <u>See ACT, Inc. v.</u> <u>Worldwide Interactive Network, Inc.</u>, 46 F.4th 489, 503–04 (6th Cir. 2022) ("[I]nterference with customer relationships and damage to reputation are precisely the sorts of injuries this circuit has said are difficult to quantify monetarily, and thus constitute irreparable harm.") (citations omitted). The fear and intimidation Mr. Philipson has wreaked through his online antics also represent the sort of difficult to quantify damages that constitute irreparable harm, warranting a preliminary injunction. This factor weighs in favor of granting MAA's Motion for Preliminary Injunction.

# C. No Substantial Harm to Third Parties

Evaluating the third factor "requires a court to balance the harm a plaintiff would suffer if its request for a preliminary injunction was denied with the harm the defendants would suffer if they were to be preliminarily enjoined. It also requires a court to assess the impact a preliminary injunction might have on relevant third parties." <u>Corp. Exp. Off. Prod. v. Warren</u>, No. 01-2521 DBRE, 2002 WL 1901902, at \*27 (W.D. Tenn. May 24, 2002).

Any harm Mr. Philipson may sustain as a result of the issuance of a preliminary injunction that prevents him from engaging in the sort of activities he has been engaged in would be outweighed by the ongoing harms MAA would suffer if the injunction were denied. Moreover, the preliminary injunction will not result in harm to third parties. In fact, prohibiting Mr. Philipson from disseminating defamatory information about MAA would likely help third parties and the public, and not harm them. <u>See e.g., Davenport v. Wash. Educ. Ass'n</u>, 551 U.S. 177, 188 (2007) (finding that "speech that is . . . defamatory can be constitutionally proscribed because the social interest in order and morality outweighs the negligible contribution of those categories of speech to the marketplace of ideas"). This factor also weighs in favor of issuing a preliminary injunction.

#### D. Injunctive Relief Serves the Public Interest

Finally, issuing the injunction MAA seeks will also serve the public interest. As MAA points out, "[t]he public interest is always served by enhancing public safety." (ECF No. 82 at PageID 925.) The public, which includes MAA, its employees, its counsel, and others, have a right to be protected from Mr. Philipson's stalking and defamation. The final factor weighs in favor of granting MAA's Motion for Preliminary Injunction.

Because all four factors weigh in favor of granting MAA's Motion for Preliminary Injunction, the motion is **GRANTED** as to its claims for negligence <u>per se</u> and defamation, but **DENIED** as to its claim for deceit.

#### E. Security

Under the Federal Rules, "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). However, "[w]hile this language appears to be mandatory, 'the rule in our circuit has long been that the district court possesses discretion over <u>whether</u> to require the posting of security."" <u>Appalachian Reg'l Healthcare, Inc. v. Coventry Health & Life Ins. Co.</u>, 714 F.3d 424, 431 (6th Cir. 2013) (quoting <u>Moltan Co. v. Eagle–Picher Indus., Inc.</u>, 55 F.3d 1171, 1176 (6th Cir. 1995)). Here, given MAA's strong likelihood of success on the merits, as well as the fact that Mr.

Philipson will incur little, if any, harm upon the entry of the preliminary injunction, MAA shall not be required to post a bond.

# IT IS THEREFORE ORDERED THAT:

- 1. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from creating or setting up any social media account or any other type of account in the name, or a confusingly similar name, of any Mid-America Apartment Communities, Inc., Mid-America Apartments, L.P., any of their respective affiliates, and its and their respective present or past shareholders, directors, officers, managers, partners, employees (other than Defendant), agents and professional advisors (including but not limited to attorneys, accountants and consultants (collectively, "MAA Persons"), without such individual's or entity's express written permission.
- 2. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from attempting to access or take control of any social media account or any other type of account or device, or to change the login credentials of any account or device, in the name of any MAA Person without such individual's or entity's express written permission.
- 3. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for jobs in the name of any individual MAA Person without the individual's express written permission.
- 4. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from applying for credit cards or any other type of

financial instrument or loan in the name of any MAA Person without the individual's or entity's express written permission.

- 5. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from purchasing domain names that contain the MAA trademarks and/or from setting up and/or publishing a website that uses MAA's trademarks in an infringing manner or in a manner that is likely to cause confusion among MAA customers and the apartment rental marketplace.
- 6. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from setting up social media accounts, whether on LinkedIn or otherwise, that falsely purport to be a MAA-sanctioned account or that use the MAA trademarks in a manner that is infringing or likely to cause confusion among MAA customers and the apartment rental marketplace.
- Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from accessing or attempting to access MAA's computer systems or servers.
- 8. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from contacting any individual MAA Person inperson or by phone, electronic mail, text message, social media, direct message, or any other method, without the express written consent of such person.
- 9. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261A.

- 10. Defendant shall not come within 500 feet of any MAA office, to include parking structures.
- 11. Other than as noted in Paragraph 12 below, Defendant Philipson, whether under his own name or a false name, and those in active concert with him, are hereby enjoined and prohibited from using, posting, publicizing, disseminating, or distributing statements, including but not limited to e-mails, the leaving of a review on an internet platform, or assisting another in doing same, that state or imply that:

a. MAA's General Counsel, Rob DelPriore has participated in illegal or improper stock transactions;

b. That it was unethical or improper for Rob DelPriore to have previously been employed at Bass, Berry & Sims;

c. there is something improper, illegal, or untoward about the corporate structure of MAA;

d. that MAA lacks proper insurance coverage;

e. that MAA and its corporate activities have compromised "tenant safety;"

f. that MAA has inadequate mold and water remediation such that they threaten tenant health and "property integrity";

g. that MAA spends lavishly at the expense of the tenants;

h. that MAA has dangerous policies with regard to residents' pets;

i. that MAA has inadequate grill safety measures;

j. that MAA or its counsel has committed wrongful or improper conduct by attempting to serve a subpoena in his lawsuit.

- 12. Nothing in this Order shall in any way limit Defendant's right to make whistleblowing complaints or to otherwise communicate with a government agency, as provided for, protected under, or warranted by applicable law.
- 13. This Preliminary Injunction shall remain in effect until a final order is entered in this case unless dissolved sooner by order of this Court.

## III. Contempt of Court

Finally, the Court warned Mr. Philipson that his failure to respond to the Court's orders would result in a finding that he was in contempt. (See ECF No. 90 at PageID 1473.) Mr. Philipson has failed to respond to multiple orders to show cause and failed to attend multiple hearings set before this Court, as well as the Court-ordered judicial mediation. Given this ongoing obstreperous behavior, the Court is left no choice and hereby FINDS MR.

# PHILIPSON IN CONTEMPT.

A hearing addressing Mr. Philipson's purging of his contempt will be held at 10:00 a.m. on Monday, April 15, 2024, in Courtroom 1. If Mr. Philipson fails to appear as directed, the Court shall take all necessary action to bring him before the Court, including but not limited to issuing a warrant for his arrest and directing that he be held in custody pending a hearing on this matter.

#### CONCLUSION

For the reasons stated above, the Court **DENIES AS MOOT** MAA's Motion for Contempt and Sanctions; **GRANTS IN PART AND DENIES IN PART** MAA's Motion for Preliminary Injunction; **DENIES** Mr. Philipson's request to continue the mediation; **FINDS** Mr. Philipson in Contempt; and **SETS A HEARING** regarding Mr. Philipson's Contempt for 10:00

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 47 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 22 of 22 PageID <pageID>

a.m. on Monday, April 15, 2024, in Courtroom 1.

IT IS SO ORDERED, this 19th day of March, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

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Document 103-1 PageID 1810

# Exhibit E

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Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 49 of 62 Case 2:23-cv-02186-SHL-cgc Document 22-1184 de 07/31/23 Page 1 of 10 PageID 300

Exhibit A

From:google-legal-support@google.comSent:Tuesday, May 23, 2023 4:58 PMTo:phillydee100@gmail.comSubject:Re: Google Internal Ref. No. 33616458Attachments:Order Denying Philipson's Motion to Quash Subpoena.pdf; Subpoena dated<br/>2024.04,06.pdf

Hello,

Thank you for your emails. Google has received the attached Order dated May 16, 2023, requiring Google's production of documents. Because Google has received compulsory legal process, Google intends to respond to the attached subpoena and may produce responsive non-content documents by May 30, 2023.

Regards, Google Legal Investigations Support

On Wed, May 17, 2023 at 16:53 UTC phillydee100@gmail.com wrote: Good afternoon,

Following up on this? Can I please have a copy of the subpoena that was originally sent to me

Thank you..

On Sat, Apr 29, 2023, 1:43 PM phillydee100 <phillydee100@gmail.com> wrote: Good afternoon,

Can I please have a copy of the subpoena that Google sent me last week regarding Mphillydgmail.com and Phillydee100@gmail.com? I have misplaced this after I sent it to the SEC.

1

What was filed with the court was different than the one I was sent. I attached the one filed in court.

Thank you very much for your assistance.

Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 50 of 62 Case 2:23-cv-02186-SHL-cgc Document 22-118-4 Filed 07/31/23 Page 2 of 10 PageID 301

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to	Pennit Inspection of Premises in a Civil Action	
UNITED STATES D	ISTRICT COURT	
for the	6	
Western District of	Tennessee	
Mid-America Apartment Communities, Inc.		
Plaintiff )		
John Doe 1	Civil Action No. 2:23-cv-02186	
Defendant )		
To: Google LLC - Corporat 2710 Gateway Oaks Drive, Suite		
Production: YOU ARE COMMANDED to produce a documents, electronically stored information, or objects, and to material:		
See Attached Exhibit A		
Place: Bass, Berry & Sims PLC; Attn: Paige Mills	Date and Time:	
150 3rd Ave. S. Nashville, TN 37201; pmills@bassberry.com	4/27/2023 5:00 p.m. CST	
Inspection of Premises: YOU ARE COMMANDED t	o permit entry onto the designated premises, land, or	

D Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
·	<u> </u>

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(c) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

ÖR

Date: 04/06/2023

CLERK OF COURT

Oaige Mills

Signature of Clerk or Deputy Clerk

Attorney's signature

Paige Mills, Bass, Beny Sims PLC, 150 Third Ave. S., Suite 2800, Nashville, TN 37201; (615) 742 -8200; pmills@bassberry.com

#### Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed, R. Civ. P. 45(a)(4).

 Case 2:23-cv-02186-SHL-cgc
 Document 103-1
 Filed 06/21/24
 Page 51 of 62

 Case 2:23-cv-02186-SHL-cgc
 Document 103-1
 Filed 07/31/23
 Page 3 of 10
 PageID 302

ivil Action No. 2:23-cv-0	)2186		
	PROOF OF SE	RVICE	
(This secti	ion should not be filed with the cour	t unless required by Fed. R. Civ. P. 45.)	)
I received this subp	ocena for (name of individual and title, if a	ŊJ	
on (date)	·		
$\Box$ I served the sub	poena by delivering a copy to the nar	ned person as follows:	
		•	
····		on (date) ;	or
I returned the su	bpoena unexecuted because:		
		States, or one of its officers or agents, I , and the mileage allowed by law, in the	
· \$	'		
Ay fees are \$	for travel and \$	for services, for a total of \$	0.00
·			0.00
·	for travel and \$		0.00
I declare under pen	alty of perjury that this information i	s true.	0.00
I declare under pen	alty of perjury that this information i		0.00
I declare under pen	alty of perjury that this information i	s true. Server 's signature	0.00
I declare under pen	alty of perjury that this information i	s true.	0.00
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I declare under pen	alty of perjury that this information i	s true. Server's signature Printed name and title	0.00
I declare under pen Date:	alty of perjury that this information i	s true. Server's signature Printed name and title	0.00
Date:	alty of perjury that this information i	s true. Server's signature Printed name and title	0.00

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AO 88B (Rev. 12/13) Subpoent to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

#### Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

#### (c) Place of Compliance.

(1) For a Trial, Hearing, ar Deposition. A subportation only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly manages business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoend may command:

 (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 (B) inspection of premises at the premises to be inspected.

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(d) Protecting a Person Subject to a Subpoena; Euforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this dury and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoend a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the carlier of the time specified for compliance or 14 days after the subpoend is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order most protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply:

 (ii) requires a person to comply beyond the geographical limits specified in Rule 45(e);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(il) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents, A person responding to a subpoend to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stared Information Not Specified. If a subpoend does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may monetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) Claiming Privilege or Protection,

(A) Information Withheld. A person withholding subpoented information under a claim that it is privileged or subject to protection as trial-preparation material must:

(I) expressly make the claim: and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

#### (g) Contempt.

The court for the district where compliance is required---und also, after a motion is transferred, the issuing court---may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoent or an order related to it.

For access to subpoend materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

)

MID-AMERICA APARTMENT , COMMUNITIES, INC.		
	Plaintiff,	
v.		
JOHN DOE 1 AND JO	)HN DOE 2.	

Docket No. 2:23-cv-02186 JURY DEMAND

· Defendants.

# **GOOGLE SUBPOENA ATTACHMENT A**

Please disclose the basic subscriber records (as set forth below at A-F) for the following three

Gmail accounts and three websites:

- mphillyd@gmail.com
- phillydee100@gmail.com •
- timmy.argo75@gmail.com
- maafraud.com
- maa.apartments
- maaapartments.com ø

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and

durations;

I affirm that these two email addresses belong to me. However, I maintain reservations regarding the adequacy of the grounds upon which they were subpoenaed. Furthermore, I am perplexed by MAA's inquiry into my intention to seek quashing or suppression of these email addresses.

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number)

35425530.1

Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 55 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 07/31/23 Page 7 of 10 PageID 306

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Western District of Tennessee

Mid-America Apartment Communities, Inc.

Plaintiff V. John Doe 1 John Doe 2

Civil Action No. 2:23-cv-02186

Defendant

#### SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Google LLC - Corporation Service Company 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attached Exhibit A

Place: Bass, Berry & Sims PLC; Attn: Paige Mills	Date and Time:
150 3rd Ave. S.	4/27/2023 5:00 p.m. CST
Nashville, TN 37201; pmills@bassberry.com	

□ Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
l	

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

OR

Date: 04/06/2023

CLERK OF COURT

Paige Mulls

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)
Mid-America Apartment Communities, Inc.
, who issues or requests this subpoena, are:

Paige Mills, Bass, Berry Sims PLC, 150 Third Ave. S., Suite 2800, Nashville, TN 37201; (615) 742 -6200; pmills@bassberry.com

#### Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Document 103-1 Filed 06/21/24 Page 56 of 62 Case 2:23-cv-02186-SHL-cgc Case 2:23-cv-02186-SHL-cgc Documen 22-1 19-18 d 07/31/23 Page 8 of 10 PageID 307 AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2) Civil Action No. 2:23-cv-02186 **PROOF OF SERVICE** (This section should not be filed with the court unless required by Fed. R. Civ. P. 45.) I received this subpoena for (name of individual and title, if any) on (date) □ I served the subpoena by delivering a copy to the named person as follows: on (date) ; or □ I returned the subpoena unexecuted because: \_\_\_\_ Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ My fees are \$ for travel and \$ for services, for a total of \$ 0.00 I declare under penalty of perjury that this information is true. Date: \_\_\_\_\_ Server's signature Printed name and title Server's address Additional information regarding attempted service, etc.:

# Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 57 of 62 Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 07/31/23 Page 9 of 10 PageID 308

AO 38B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Perinit Inspection of Premises in a Civil Action(Page 3)

#### Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

#### (c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avaiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any ar all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the carlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

## (3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;
 (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

 (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

 (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 (ii) ensures that the subpoended person will be reasonably compensated.

(i) ensures that the subplended person will be reasonably compensation

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subparent to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information under scal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

#### (g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

Case 2:23-cv-02186-SHL-cgc Document 103-1 Filed 06/21/24 Page 58 of 62 Case 2:23-cv-02186-SHL-cgc Document 22-1 Filed 07/31/23 Page 10 of 10 PageID 309

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

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)

MID-AMERICA APARTMENT, COMMUNITIES, INC.	
,,	Plaintiff,
<b>v</b> .	

JOHN DOE 1 AND JOHN DOE 2,

Docket No. 2:23-cv-02186 JURY DEMAND

Defendants.

## **GOOGLE SUBPOENA ATTACHMENT A**

Google shall disclose the following basic subscriber records for Gmail account "timmy.argo75@gmail.com" and websites "maafraud.com", "maa.apartments" and "maaapartments.com":

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number)

Document 103-1 Filed 06/21/24 PageID 1821

# Exhibit F

Document 103-1 PageID 1822

#### Narrative of the Court Situation:

(a) On April 3rd, I was designated as a witness in a trademark infringement case. A subpoena issued that day failed to list any of my known email addresses. Attorney Paige Mills subsequently amended the subpoena to include my email addresses known to MAA— Mphillyd@gmail.com and Phillydee100@gmail.com—based on her assumption that these accounts were closed. This assumption was informed by an auto-response suggesting the accounts were inactive, which was also communicated to the SEC through a TCR. This action potentially violates Federal Rule of Civil Procedure 45(d)(3)(A)(ii), which requires that a subpoena must avoid undue burden or expense, and Mills' actions could be seen as an overreach without proper evidence of the accounts' status.

(b) I became aware of the altered subpoena on April 29th via a notification from Google, and I withheld this information until July 31st. On June 13th, Ms. Mills prematurely updated the legal complaint to assert that I was the creator of the infringing website, even though my email and ISP records were subpoenaed without the host, Wix, confirming my involvement. This premature assertion could be contested under Federal Rule of Civil Procedure 11, which requires factual validation for claims made in filings, and as seen in Securities and Exchange Commission v. CMKM Diamonds, Inc., where unsubstantiated claims led to sanctions against the filer.

(c) During a conference call with the judge on September 11th, I voiced my concerns regarding the procedural fairness of the case. It wasn't until November that I discovered that Michael Kapellas, previously employed by the same firm as Ms. Mills, had authored several orders in the case. The biased nature of these orders, where Kapellas presumably favored his former firm, raises issues related to Federal Rule of Civil Procedure 28 and Canon 3 of the Code of Conduct for United States Judges, concerning the requirement for judicial impartiality and independence, as highlighted in Liteky v. United States, which discusses the grounds for disqualifying a judge for apparent bias.

(d) Before this revelation, Mr. Kapellas continued to issue biased orders and motions against me, effectively prejudging the case during the discovery phase. Without complete evidence, this premature judgment suggests a breach of Federal Rule of Civil Procedure 56, which governs summary judgment and requires a full factual record before ruling on the case's merits. If proven, the suspicion of ex parte communications with the judge or judicial law clerk would contravene Federal Rule of Civil Procedure 23(b) and the principles established in In re School Asbestos Litigation, which strictly prohibit such communications to ensure transparency and fairness in judicial proceedings.

(e) Mr. Kapellas continues to be involved in the case and issue orders against me, despite the admission by opposing counsel that he previously worked for their law firm, Bass, Berry & Sims PLC. This involvement is explicitly documented in the court docket, where my questioning of the judge's decisions has been noted. Similar patterns of potential conflicts of interest and procedural irregularities involving Mr. Kapellas are evident in other cases, such as case number 2-24-cv-02199- SHL-atc, accessible through PACER. This raises significant concerns under Federal Rule of Civil Procedure recusal rules, specifically Rule recusal, which mandates a judge's disqualification in any proceeding in which his impartiality might reasonably be questioned. Further, Canon 2 of the Code of Conduct for United States Judges emphasizes that a judge should avoid impropriety and the appearance of impropriety in all activities. The metadata and the orders issued against me, which can be reviewed on PACER or as detailed in (Exhibit F), underscore the need for a thorough

examination of these ongoing procedural discrepancies, advocating for adherence to the principles outlined in *Liljeberg v. Health Services Acquisition Corp.*, which emphasizes the critical nature of maintaining judicial integrity to uphold public confidence in the judiciary.

(f) In (Exhibit F), MAA baselessly alleges that I have made numerous disparaging comments about them, yet they provide no substantiating evidence for these claims. Conversely, I have continuously submitted compelling evidence to the SEC since 2021 that counters their assertions of innocence. A detailed examination of MAA's corporate structure would reveal significant deficiencies in its internal controls, alongside documented instances where it has issued false and misleading statements to investors, the public, and its employees. Additionally, there is verifiable evidence that MAA has inaccurately reported its casualty expenses and maintained improper and unsafe policies regarding pet management, grill safety, and inadequate water remediation procedures.

These discrepancies are evident in the documentation I have provided and corroborated by testimonies from hundreds of former employees, numerous negative resident reviews, and multiple complaints filed with the Better Business Bureau (BBB). For MAA to categorically deny these welldocumented accusations in court documents starkly contradicts the evidence I have presented. Such denials could potentially breach Federal Rule of Civil Procedure 11, which obligates parties to avoid making arguments or filing claims that are not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law, mainly when such assertions are not factually supported. This rule underscores the requirement for factual accuracy and legal propriety in judicial filings. As established in *Securities and Exchange Commission v*.

CMKM Diamonds, Inc., unsubstantiated claims may lead to sanctions and other legal repercussions.

The legal proceedings I am entangled in exhibit pronounced signs of judicial misconduct and biases, particularly highlighted in (Exhibit C), describing the improper issuance of a subpoena. This has disrupted my ability to defend effectively and significantly infringed upon my constitutional rights and due process. Immediate access to requested FOIA materials is imperative to address these breaches and restore my ability to engage in legal defenses effectively. This situation is reminiscent of **United States v. Nixon**, 418 U.S. 683 (1974), where the Supreme Court underscored the fundamental necessity of due process rights in ensuring fair legal proceedings. In addition to this, I believe the following reasons for expedited treatment are also present:

(g) On March 19th, Judge Lipman, with Michael Kapellas technically acting as the Judicial Law Clerk, threatened to hold me in contempt and issue a warrant for my arrest by April 15th, intending to detain me until facing contempt charges. Subsequently, on April 15th, Judge Lipman announced her decision to rule on the motion for sanctions and a permanent injunction, further exacerbating their biased and one-sided treatment of my case. This sequence of events underscores the urgency and severity of the situation and the need for immediate action to address the unjust treatment and threats against me.

Furthermore, I have been barred from disseminating any information that clearly violates my constitutional rights and ordered to stay away from MAA for no reason other than unsubstantiated claims.

To contextualize, I have distanced myself from MAA since 2021, cutting all connections due to the ongoing harassment I endured after reporting my suspicions. I've taken extensive measures to protect myself, including changing my phone number, email, and social media accounts to shield me from further intimidation and retaliation. The docket summary is available in the separate attached exhibit H for a comprehensive understanding. Additionally, I am prepared to offer

additional details or provide the entire biased docket upon request from the individual or department adjudicating this appeal.

(email from defendant on 6/21/2024)

I do not recall asking for recusal? I asked for a bill.

Have a nice weekend.

Thank you,

**Dennis Philipson** 

(email from defendant on 6/21/2024) Good evening,

Firstly, I am unsure of the appropriate contact person via email, as the information on the website appears to have been updated recently. Additionally, since the dispatch of mailed letters and orders has ceased and I am not receiving notifications at the correct email address, I apologize for any confusion caused by inadvertently copying the wrong individuals. Please find attached my formal response along with the exhibit detailing the reiteration of whistleblower complaints I have initiated since 2021. I am committed to continuing my submissions to the MAA whistleblower hotline. My review will persist until I have meticulously examined every SEC filing, aiming to highlight any discrepancies or potential fraudulent activities in accordance with my rights as a whistleblower. It is important to note that despite MAA's characterization of my actions as "obsessed" or "acting," they have been previously informed through a letter in 2019 that I have a diagnosed mental illness. This context is critical in understanding the nature of my communications. Additionally, the stress from what I perceive as retaliation against me for my 2021 whistleblower complaints has significantly exacerbated my mental health issues. I have recently started two additional medications to manage severe anxiety, depression, manic episodes, and bipolar disorder.

Furthermore, I am concerned that MAA may not fully grasp the implications of a conflict of interest. The decision to hire their auditors, the failure to relay whistleblower complaints to their board effectively, and the continued use of the same attorneys for multiple years to facilitate the setup of what is purported to be a "REIT" all suggest a pattern that may compromise ethical standards and transparency. These actions raise serious questions about the integrity of MAA's operations and governance. For a detailed account and evidence of these concerns, please refer to Exhibit A attached herewith. Furthermore, I noticed that the stock symbol for MAA shifted from Inc. to LP on or around June 3rd, following their NAREIT conference. I am puzzled by this change as I have not observed any corresponding filing with the SEC, which raises potential concerns under the Securities Exchange Act of 1934. Specifically, Section 13 and Section 15(d) of the Act require timely and accurate reporting of significant corporate events that could influence investor decisions. This seems like a significant alteration that should have been documented, especially considering some concerns I mentioned in Exhibit A related to their presentation at the conference

For your reference, all notifications related to this case are to be sent to my designated email address, dphilipson1982@yahoo.com (I do not believe this one has been subpoenaed yet). Additionally, I have repeatedly requested, and hereby reiterate, that all documents be mailed directly to my home address. This request has been made several times, and I expect it to be honored without further delay.

Thank you for your attention to these matters. I trust that these instructions will be followed meticulously to avoid any further administrative oversights.

Have a blessed weekend!

Respectfully,

Dennis Michael Philipson

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

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MID-AMERICA APARTMENT
COMMUNITIES, INC.,
Plaintiff,
V.
DENNIS MICHAEL PHILIPSON,
Defendant.

No. 2:23-cv-2186-SHL-cgc

#### **Response to ORDER ADDRESSING EMAIL TO THE COURT**

Since I no longer have access to PACER, and to reiterate what I have requested from the court numerous times, please mail me all orders or notices affecting me.

I am responding to the ORDER ADDRESSING EMAIL TO THE COURT dated June 21. I wish to clarify several points and address concerns raised in the Order, specifically regarding the issue of recusal, potential bias, and the current whistleblower complaint I have submitted with MAA.

Firstly, I wish to unequivocally state that my email was not a request for recusal. Instead, it was intended to bring to the Court's attention the prior relationship between the attorneys at Bass, Berry & Sims PLC and the judicial law clerk involved in this case. This relationship, coupled with the events that have transpired, raises serious concerns about potential bias and the fairness of the judicial process in the Western District of Tennessee.

Under 28 U.S.C. § 455(a), any judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. The connection between the attorneys at Bass, Berry & Sims PLC and the judicial law clerk could reasonably lead an objective observer to question the impartiality of the proceedings. This is

#### Case 2:23-cv-02186-SHL-cgc Document 105 Filed 06/21/24 Page 2 of 6 PageID 1828

particularly concerning in light of the broader context of my case, where fairness and impartiality are crucial for a just resolution.

Additionally, the Ninth Circuit in *United States v. Hernandez*, 109 F.3d 1450 (9th Cir. 1997), emphasized that the mere appearance of bias can be as damaging to public confidence in the judiciary as actual bias. This case illustrates the necessity for courts to be vigilant about any relationships or circumstances that might create an appearance of partiality.

The importance of maintaining an unbiased judicial process is further underscored by *Patterson v. Mobil Oil Corp.*, 335 F.3d 476 (5th Cir. 2003), where the Fifth Circuit highlighted that even non-financial relationships and connections can be grounds for concern if they raise reasonable questions about a judge's impartiality. This aligns with the concerns raised by the relationship between the attorneys at Bass, Berry & Sims PLC and the judicial law clerk.

Furthermore, the Seventh Circuit in *Pepsico, Inc. v. McMillen*, 764 F.2d 458 (7th Cir. 1985), pointed out that any potential for bias or conflict of interest must be scrupulously avoided to ensure the fairness of judicial proceedings. This is particularly critical in maintaining the procedural integrity required under Rule 1 of the Federal Rules of Civil Procedure, which mandates the just and efficient resolution of disputes.

These cases collectively reinforce the principle that both actual and apparent bias must be avoided to uphold the integrity of the judicial process. The relationship between the attorneys at Bass, Berry & Sims PLC and the judicial law clerk, combined with the events that have transpired, substantiate the concerns regarding potential bias and fairness in my case before the Western District of Tennessee.

#### Case 2:23-cv-02186-SHL-cgc Document 105 Filed 06/21/24 Page 3 of 6 PageID 1829

I want to make it abundantly clear that my communications with this court were never intended as a request for recusal. Instead, I have repeatedly called for a swift and decisive judgment in this matter. Despite this, the court continues to draw out the process unnecessarily, which only reinforces my perception of bias within this venue.

The ongoing delays and lack of resolution are not just frustrating; they are indicative of a profound unfairness that undermines the integrity of this judicial process. It is becoming increasingly evident that the court is not interested in a just resolution, but rather in prolonging a case that should have been decided promptly and equitably. This continued stalling serves no purpose other than to exacerbate the challenges I face, casting a shadow over the impartiality of the proceedings.

This court's apparent bias and its strategy of dragging out what should be straightforward judicial processes are unacceptable. Such actions betray the principles of fairness and due process as enshrined in the Fifth and Fourteenth Amendments of the United States Constitution. It is disheartening and frankly outrageous that this court, entrusted with upholding justice, seems to be perpetuating injustice through its reluctance to act decisively.

Why continue this charade? The persistent delays and the court's failure to provide timely judgments only deepen my skepticism about the fairness of these proceedings. It is time for this court to do what should have been done long ago: conclude this matter with the clear and just resolution that justice demands.

Furthermore, the case of *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), underscores the necessity of recusal in situations where the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable. In *Caperton*, the Supreme Court

#### Case 2:23-cv-02186-SHL-cgc Document 105 Filed 06/21/24 Page 4 of 6 PageID 1830

emphasized the importance of avoiding even the appearance of bias to maintain public confidence in judicial integrity.

Moreover, the right to a fair trial is a cornerstone of the American judicial system, protected under the Sixth Amendment for criminal cases and extended to civil cases through the Due Process Clause of the Fourteenth Amendment. The case of *Goldberg v. Kelly*, 397 U.S. 254 (1970), established that due process requires an impartial decision-maker. This principle is equally applicable in civil cases, ensuring that litigants receive a fair and unbiased hearing.

Additionally, in *Liteky v. United States*, 510 U.S. 540 (1994), the Supreme Court clarified that recusal is warranted not only where there is actual bias but also where there is an appearance of partiality that could undermine public confidence in the judicial process. The relationship between the judicial law clerk and the attorneys at Bass, Berry & Sims PLC raises such an appearance of partiality.

Furthermore, I would like to bring to the Court's attention the current whistleblower complaint I have submitted with MAA. This complaint represents only a fraction of the issues I have reported, highlighting systemic problems that further underscore the need for an unbiased and fair judicial process. The whistleblower complaint details significant concerns that are relevant to my case and should be considered in evaluating the broader context of my claims (Exhibit A).

The principles of judicial conduct, as outlined in the Code of Conduct for United States Judges, emphasize the importance of avoiding impropriety and the appearance of impropriety in all activities. Canon 2 of the Code specifically states that a judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. While my

#### Case 2:23-cv-02186-SHL-cgc Document 105 Filed 06/21/24 Page 5 of 6 PageID 1831

email was not a formal motion for recusal, it was an attempt to address potential violations of these ethical standards to ensure a fair and impartial hearing.

I trust that the Court will take these concerns seriously and will act in accordance with the principles of justice and fairness that underpin our legal system. I respectfully request that the Court carefully consider the information provided and take appropriate steps to address the issues raised.

Thank you for your attention to this matter.

Respectfully submitted, S/Dennis Philipson, Pro Se Defendant 6178 Castletown Way, Alexandria VA 22310 Phillydee100@gmail.com Dated: June 21, 2024 Document 105 PageID 1832

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of September, 2023, I electronically filed the foregoing document with the Clerk of the Court using the court's electronic filing system, which will automatically send

notification of such filing to all counsel of record. I also certify that I have mailed the foregoing document

by United States Postal Service.

John S. Golwen BASS BERRY & SIMS PLC- Memphis The Tower at Peabody Place 100 Peabody Place Ste. 1300 Memphis, TN 38103 901-543-5900 Fax: 901-543-5999 Email: jgolwen@bassberry.com

Jordan Elizabeth Thomas BASS, BERRY & SIMS PLC 100 Peabody Pl. Ste 1300 Memphis, TN 38103 901-543-5966 Email: jordan.thomas@bassberry.com

Paige Waldrop Mills BASS BERRY & SIMS 150 3rd Ave S Nashville, TN 37201 615-742-7770 Email: pmills@bassberry.com Dated: October 3, 2023



# Message Summary

Subject Retaliation Judement

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Created Fri, 06/14/2024 - 09.37

# **Original Message**

Tamara Fischer, Edith Kelly-Green, James K. Lowder, Thomas H. Lowder, Claude B. Nielsen, William Reid Sanders, Gary S. Shorb, and David P. Stockert, along with MAA executives H. Eric Bolton Jr. (Chairman & amp; Chief Executive Officer), A. Bradley Hill (President, Chief Investment Officer), Timothy P. Argo (Executive VP, Chief Strategy & amp; Analysis Officer), Melanie M. Carpenter (Executive VP, Chief Human Resources Officer), Robert J. DelPriore (Executive VP, Chief Administrative Officer & amp; General Counsel), Amber Fairbanks (Executive VP, Property Management), Joseph P. Fracchia (Executive VP, Chief Technology & amp; Innovation Officer), A. Clay Holder (Executive VP, Chief Financial Officer), David C. Ward (Executive VP, Investments), Leslie B.C. Wolfgang (Senior VP, Chief Ethics & amp; Compliance Officer & amp; Corporate Secretary), Indrid Agaj (Senior VP, Director of New Construction), Scott Andress, Eugenia McGown, Jay Blackman (Regional Vice President), as well as MAA outside counsel Paige Mills, John Gowen, Michael Kappallas, and the firm Bass Berry & amp; Sims PLC, are attempting to wrongfully retaliate against me in court by pursuing a judgment exceeding \$330,000.

I am prepared to have my trust cover the amount sought, contingent upon the expedited processing of the billing. Since 1995, Eric, Leslie, AI, and others have been involved in creating numerous shell companies to facilitate a range of flicit activities. This long-term scheme includes antitrust violations, securities fraud, and extensive business fraud, all of which I have extensively documented and reported to the government. Additionally, I have submitted detailed evidence of unethical and fraudulent actions by the Western Tennessee Federal District Court, resulting in over 100 communications sent to Washington, D.C. The depth and persistence of these activities might evoke comparisons to the legal thriller "The Firm," where

#### systemic corruption within powerful institutions is dramatically unveiled. Moreover, the case encompasses severe save 6/21/24,

www.angle.com/www.angle.com/an serious violations related to the civil rights of residents and employees, as well as breaches of disability rights within the operations of employee relations and human resources. departments. These transgressions underscore a pattern of systemic and exploitative practices adopted by the organization, highlighting both the scale and the impact of the wrongdoing involved.

This case not only reflects the specific misdeeds within our organization but also has broader implications across the industry, similar to the revelations in the AMD case. In that situation, a courageous insider worked in conjunction with the Department of Justice to reveal widespread price-fixing activities among major tech companies. This breach of trust not only violated the Sherman Antitrust Act by illegally manipulating market prices but also highlighted a pervasive culture of collusion aimed at stifling competition and innovation.

The whistleblower's actions in the AMD scenario, much like in our own case, were pivotal in initiating government investigations that eventually led to significant legal actions against the perpetrators. This collaboration with law enforcement is instrumental in upholding the principles of fair competition as mandated by law. Specifically, price-fixing activities breach Section 1 of the Sherman Act, which outlaws all agreements among competitors to fix product. prices, limit production, or rig bids, practices that were evidently followed by those involved in our related schemes.

The role of whistleblowers in such contexts cannot be overstated—they serve as the eyes and ears on the ground, often at great personal risk. Their willingness to come forward not only helps enforce the law but also serves to maintain corporate and public integrity by exposing actions that may otherwise remain hidden from public scrutiny. These individuals are protected under various statutes such as the Dodd-Frank Act and the Sarbanes-Oxley Act, which provide mechanisms for their protection and ensure they are not retaliated against for their disclosures.

Such cases underscore the necessity for rigorous enforcement of antitrust and securities laws and demonstrate the crucial role of internal actors in coming forward to disclose wrongdoing. As more of these instances are brought to light, they serve as a deterrent to similar practices. elsewhere in the industry, promoting a more ethical and competitive business environment. Throughout the five years I worked there, price-fixing activities were not just occasional lapses; they were a systematic part of the business strategy, making any claims to the contrary patently false. Our organization, in collaboration with RealPage, used its software platforms to orchestrate and maintain rental price agreements among competitors. This practice directly constitutes price-fixing under the Sherman Antitrust Act (15 U.S.C. § 1), which has been consistently held illegal in landmark cases such as United States v. Trenton Potteries Co., 273 U.S. 392 (1927), and United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940). These cases underscore the illegality of any agreement among competitors to fix prices, establish market shares, or control market conditions.

Moreover, the misuse of RealPage software to manipulate market prices challenges our organization's status as a legitimate real estate investment trust (REIT). By engaging in such practices, the organization is potentially violating the ethical and financial transparency. requirements expected of REITs, particularly those related to honest market participation and fair financial reporting. There's an underlying scheme to hide profits and manipulate financial statements, which is a severe breach of both federal securities laws and REIT regulations. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, whistleblowers like

myself who report securities fraud are afforded protection from retaliation (15 U.S.C. § 78u-6/21/24, a 30 PM Case 2:23-cv-02186-SHL-coc b(h)). This is critical, as it ensures that in place of sector of ward without fear of retribution. Additionally, the Clayton Act (15 U.S.C. § 15) empowers individuals harmed by antitrust violations to seek treble damages, thereby providing a substantial remedy for the financial and market distortions caused by such illegal activities.

I am bringing these issues to light through the whistleblower line not just to contest the retaliation I have faced but also to press for a thorough investigation and accountability. Ensuring compliance with antitrust and securities legislation is essential for maintaining the integrity of our financial markets and the trust of investors, employees, and the public. I am wondering whether there will be further FBI investigations akin to the one that occurred at Cortland Property Management in Atlanta. Such actions are essential to uncover and address illegal practices within the industry. It's crucial to remember that any attempt to destroy evidence in anticipation of or during such investigations constitutes obstruction of justice, a serious federal offense that could lead to additional legal consequences beyond the initial charges related to antitrust or fraud violations.

## Comments

Displaying 1 - 25 of 34

#### Created

Thu, 06/20/2024 - 13:16

To clarify : It appears that MAA is now the stock symbol for Mid-America Apartments, L.P., while Mid-America Apartment Communities, Inc. is represented by the symbols MAAI and MAA-PI. This seems to be a recent change. This is very concerning

### Created

Thu, 06/20/2024 - 12 54

I am seeking clarification regarding some of the stock symbols and company designations associated with Mid-America Apartment Communities Inc. and its operating partnership. Specifically, I would like to understand the following:

What exactly does the stock symbol MAAI represent? Is this a new stock symbol or a different class of security related to Mid-America Apartment Communities Inc.?

Could you provide detailed information on the distinctions between Mid-America Apartments, L.P. (MAA) (CIK 0001581776) and Mid-America Apartment Communities Inc. (MAAI, MAA-PI) (CIK 0000912595)?

Any insights or explanations you can provide regarding these symbols and their respective roles within the company's structure would be greatly appreciated.

Thank you for your assistance.

Best regards,

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#### Desument 1905 How Filed 106/21/24 Page 4 of 45 Page ID 1836

I have serious concerns regarding the Shelf Registration Statement issued in May. My review has identified several areas that raise substantial issues about the transparency and potential legality of MAA's actions. Despite raising these concerns previously, the practices persist, warranting immediate attention to ensure compliance with federal and state laws, including SEC regulations and tax codes.

The recent Shelf Registration Statement indicates that MAA may offer various securities, in different combinations and with varying terms. This complexity obscures the true financial obligations and benefits, making it difficult for investors to fully understand the risks involved. This practice appears designed to obscure the true financial risks and obligations from investors, preventing them from making fully informed decisions. Why does MAA persist in issuing such convoluted and intricate securities offerings? Can MAA provide detailed, clear, and simplified explanations of each type of security being offered, including specific terms, financial obligations, and potential risks associated with each? This lack of transparency potentially violates Section 11 of the Securities Act of 1933, which imposes liability on issuers for false or misleading statements in registration statements.

Moreover, the document mentions that MAA's board of directors has significant authority to amend the charter and bylaws, including the issuance of additional shares or series of preferred stock without shareholder approval. Such amendments can be used to entrench management, dilute existing shareholders, and manipulate voting outcomes, potentially harming shareholder interests. How often have amendments been made to the charter and bylaws in the past five years? Can MAA provide detailed records of each amendment and its justification, and how these amendments directly benefited the board or executive team at the expense of shareholders? The Tennessee Business Corporation Act (TBCA) requires shareholder approval for certain amendments, and any deviation from this could be seen as a deliberate attempt to undermine shareholder rights.

The use of proceeds from the sale of securities is stated as being for general corporate purposes, including repayment of debt, property development, acquisitions, and capital expenditures. The vague description of the use of proceeds raises concerns about the specific allocation of funds, potential mismanagement, and misuse of investor capital. Can MAA provide a detailed breakdown of how the proceeds from past securities offerings were allocated and used? The consistent failure to provide transparent and specific information regarding the allocation of these funds is alarming. Is the company deliberately vague to obscure potential mismanagement or misuse of investor capital? SEC Rule 10b-5 under the Securities Exchange Act of 1934 prohibits making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made not misleading.

MAA has the ability to issue debt securities with varying terms, potentially without clear disclosure of the associated risks and financial impact. Issuing debt with complex terms can mask the true financial burden and risk associated with the debt, potentially misleading investors. Why does MAA engage in the issuance of debt securities with

complex and opaque terms? Can MAA provide a full disclosure of all debt terms and their 6/21/24, a 39 PM Case 2:23-CV-02186-SHL-coc Document Marile Methods and their potential impact on the company's final case 12/24 Page 5 of 45 requires detailed disclosure about debt securities to protect bondholders, and any failure to comply with this could indicate intentional obfuscation of financial risks.

Additionally, MAA's board of directors is authorized to issue up to 20,000,000 shares of preferred stock with varying terms, including preferences over common stock. Issuing preferred stock with favorable terms to insiders can dilute common shareholders' value and voting power. Can MAA disclose any instances where preferred stock has been issued with terms that disproportionately favor insiders or executive management? How does MAA ensure that such issuances do not dilute the value and voting power of common shareholders? Section 7 of the Securities Act of 1933 requires disclosure of all material facts necessary to understand the terms and provisions of the securities offered.

The registration statement provides limited information on contingent liabilities, including potential legal and regulatory risks. Insufficient disclosure of contingent liabilities can mislead investors about the true risk profile and financial health of the company. Why does MAA provide inadequate disclosure regarding its contingent liabilities? Can MAA provide a detailed account of all contingent liabilities and their potential impact on the company's financial health? The Financial Accounting Standards Board (FASB) ASC 450-20 requires disclosure of contingent liabilities in financial statements.

The forward-looking statements in the registration document are based on various assumptions and projections, with limited clarity on the basis of these assumptions. Lack of transparency in financial projections and assumptions can mislead investors about the company's future performance and risk. Why does MAA fail to provide clear and detailed explanations of the assumptions underlying its financial projections? Can MAA provide detailed, realistic, and transparent financial projections? The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements but requires meaningful cautionary statements identifying important factors that could cause actual results to differ materially.

The registration document briefly mentions related party transactions but lacks detailed disclosure. Inadequate disclosure of related party transactions can mask conflicts of interest and self-dealing by management. Can MAA provide a comprehensive list of all related party transactions in the past five years, including the nature and financial impact of these transactions? Why does MAA fail to disclose these details transparently? SEC Regulation S-K Item 404 requires disclosure of related party transactions.

Furthermore, the document provides limited information on the criteria and metrics used to determine executive compensation. Lack of transparency in executive compensation can indicate potential misalignment with shareholder interests and unjustified payouts. Why does MAA provide insufficient information on the criteria and metrics used to determine executive compensation? Can MAA disclose detailed and transparent information on how executive compensation is aligned with shareholder interests and company performance? SEC Regulation S-K Item 402 requires detailed disclosure of executive compensation.

Lastly, the registration statement includes various operating metrics without consistent 6/21/24, a 39 PMC ase 2:23-cv-02186-SHL core reporting standards or definitions. Incopatible 1698 ring of operating metrics can mislead investors about the company's true operational performance and health. Why does MAA fail to use consistent reporting standards and definitions for its operating metrics? Can MAA commit to providing transparent, consistent, and standardized reporting of all key operating metrics? SEC Regulation G and Item 10(e) of Regulation S-K require the presentation and reconciliation of non-GAAP financial measures to the most directly comparable GAAP measures.

The practices outlined above suggest a pattern of behavior that raises serious concerns about the transparency and potential legality of MAA's actions. As a Real Estate Investment Trust (REIT) with a complex corporate structure, these practices make the company's true intentions and financial conditions even more obscure. Immediate action is necessary to address these issues and ensure compliance with all relevant laws and regulations.

## Created

Wed, 06/19/2024 - 18.30

You also continue your deceptive sales techniques employed by MAA in the rental of your properties. Despite bringing these issues to your attention two years ago, your properties and pricing analysts continue to engage in practices that mislead potential tenants about the true cost of renting an apartment. These actions violate both federal and state laws designed to protect consumers from unfair and deceptive business practices.

MAA advertises a rental special of \$1,000 off the first month's rent to attract potential tenants. However, after tenants sign the lease, MAA then takes the \$1,000 discount, divides it by the remaining months of the lease, and adds this amount to the normal monthly rent. This practice effectively increases the monthly rent beyond the advertised amount without clear disclosure, misleading tenants about the actual cost of renting an apartment.

For example, if the rent for a 12-month lease is advertised at \$1,700 per month with a special offer of \$1,000 off the first month, tenants might expect to pay \$700 for the first month and \$1,700 for each of the remaining 11 months. However, MAA instead divides the \$1,000 discount by the remaining 11 months, which is approximately \$90.91, and adds this amount to the monthly rent. Thus, the monthly rent becomes \$1,790.91 for the remaining 11 months. Effectively, tenants end up paying \$700 for the first month and \$1,790.91 per month thereafter, which averages out to \$1,716.67 per month over the lease term, essentially nullifying the advertised special and resulting in no real discount.

Under the Federal Trade Commission Act (FTCA), it is prohibited to engage in unfair or deceptive acts or practices in commerce. Misrepresenting rental costs falls squarely under the scope of deceptive practices as defined by this act, which is enforced by the Federal Trade Commission (FTC). Moreover, most states have consumer protection laws that mirror the FTCA's provisions and are enforced by state agencies or through private lawsuits. For instance, California's Unfair Competition Law (UCL) and Consumer Legal

Remedies Act (CLRA) provide broad protections against deceptive practices, as do the 6/21/24, a 39 pm Case 2:23-cy-02186-SHL-coc Documents Werdbow I do W6/24/24 Page 7 of 45 specific landlord-tenant laws in states provide 1839, which regulate landlord-tenant relationships and prohibit deceptive practices in rental agreements.

Relevant case law underscores the seriousness of these violations. The case FTC v. Sperry & amp; Hutchinson Co., 405 U.S. 233 (1972), established that the FTC has broad authority to define and prevent unfair or deceptive acts or practices. Similarly, State v. Ralph Williams' North West Chrysler Plymouth, Inc., 82 Wn.2d 265 (1973), demonstrates how state courts handle deceptive practices under state consumer protection laws.

In the scenario described, the deceptive practice involves advertising a rental special of \$1,000 off the first month's rent but then distributing this discount across the remaining lease term in a way that increases the monthly rent. This is both a misrepresentation and a failure to disclose true costs, violating both federal and state consumer protection laws. Misrepresentation by advertising one price but charging another constitutes a classic deceptive practice, and failure to disclose additional charges upfront violates the transparency required in advertising and agreements.

The legal consequences for these deceptive practices can be severe. Agencies like the FTC or state consumer protection agencies can bring administrative actions against landlords or property management companies engaging in such practices. Additionally, tenants may file lawsuits for damages resulting from deceptive practices, seeking remedies that could include actual damages, punitive damages, and attorney's fees. Violations of consumer protection statutes can also result in significant fines and penalties imposed by regulatory bodies.

Deceptive sales techniques in renting apartments are likely illegal under both federal and state laws. MAA must ensure that all terms, especially financial ones, are fully disclosed and not misleading. Tenants who encounter such practices have several avenues for recourse, including complaints to regulatory agencies and civil litigation. It is imperative that MAA addresses these issues immediately to comply with the law and maintain the trust of your tenants.

#### Created

Wed, 06/19/2024 - 16:00

Below, I detail the specific issues related to the lack of breed restrictions and inadequate insurance verification processes:

Absence of Breed Restrictions: MAA allows all dog breeds at its properties without any restrictions. This policy is highly unusual and dangerous, given the well-documented risks associated with certain dog breeds. Insurance companies, including Lemonade and American Family Insurance, typically exclude breeds such as Pit Bulls, Rottweilers, German Shepherds, and Doberman Pinschers due to their higher propensity for causing severe injuries.

Lack of Insurance Verification: MAA properties fail to verify whether high-risk dogs are listed on renters' insurance policies. This oversight is critical as many insurance policies specifically exclude coverage for certain aggressive breeds due to their higher propensity for causing severe injuries. By neglecting to confirm that tenants' insurance policies cover

these breeds, MAA potentially places the financial burden of dog-related incidents on the 6/21/24, a 39 PM Case 2-23-cv-02186-SHL-cgc Documents 105 How Filed 06/21/24, Page 8 of 45 residents. This is particularly troubling place Bigger Bigg

Potential Legal and Financial Repercussions. In the event of a dog attack, the absence of proper insurance venification means MAA could be held liable for damages. MAA's current practice appears to involve shifting this liability onto the residents, despite the exclusion clauses present in many renters' insurance policies. This approach is not only ethically questionable but also legally precarious. If residents are unable to cover the costs due to their insurance exclusions, MAA could face substantial lawsuits and financial penalties for failing to ensure proper coverage.

MAA's Use of LLCs and Court Cases: MAA's operational structure includes running properties through various LLCs. In documented court cases, MAA has been known to deny responsibility for incidents by arguing that the LLCs, rather than the corporation itself, hold the interests in the properties. This tactic complicates liability issues and exacerbates the risk and unethical nature of their practices. By deflecting accountability, MAA increases the financial and legal risks for both the corporation and its residents. Such practices undermine trust and highlight the company's neglect of its duty to ensure the safety and well-being of its tenants.

Legal and Ethical Concerns: This lack of due diligence in verifying insurance coverage and the use of LLCs to deflect responsibility raise significant legal and ethical concerns. Landlords have a duty of care to protect their residents from foreseeable harm, including ensuring that high-risk dogs are adequately insured. Failure to do so not only breaches this duty but also exposes MAA to potential lawsuits for negligence. The ethical implications of shifting the financial burden onto residents, who may be unaware of the exclusions in their policies, further damage the company's reputation and stakeholder trust.Legal and Insurance Implications

Renters' Insurance Policies and Breed Restrictions: Most renters' insurance policies include specific breed restrictions due to the higher risk associated with certain dog breeds. These restrictions are implemented to mitigate the liability risks posed by breeds known for their aggressive behavior and propensity to cause severe injuries.

 Lemonade Insurance: Lemonade excludes several high-risk breeds from coverage, including Pit Bulls, Rottweilers, German Shepherds, and Dobermans. These exclusions are based on statistical data indicating that these breeds are more likely to be involved in incidents of aggression and serious attacks. The policy is designed to minimize liability and ensure a safer living environment for all residents.

• American Family Insurance: Similar to Lemonade, American Family Insurance imposes breed restrictions in their renters' insurance policies. They typically exclude breeds such as Pit Bulls, Rottweilers, and Dobermans, aiming to manage the heightened risk these breeds pose. This approach reflects a commitment to reducing potential liability and safeguarding the interests of both the insurer and the policyholders.

 Assurant Insurance: Assurant also enforces breed restrictions, excluding aggressive breeds like Pit Bulls, Rottweilers, German Shepherds, and others. These restrictions are part of Assurant's broader risk management strategy to protect against the financial impacts of dog-related incidents. By excluding these breeds, Assurant aims to prevent

#### significant harm and potential legal liabilities.

6/21/24, a 39 pM Case 2:23 cv 02186 SHL-coc Decumerati 105 takes Field 06/21/24 Page 9 of 45 Industry-Wide Practices' The breed reputering state indicative of a wider industry standard. Many insurance companies exclude breeds such as Akitas, Chow Chows, Huskies, Great Danes, Mastiffs, and Staffordshire Terriers due to their aggressive tendencies and higher liability risks. These industry-wide practices are established to ensure that insurance providers can offer comprehensive coverage while managing and mitigating risks associated with certain dog breeds.

Risk of Dog Attacks: There have been numerous incidents where dogs have attacked and even killed residents at apartment complexes, highlighting the severe risks associated with allowing unrestricted breeds in close living environments. These incidents not only endanger residents but also expose property management companies to significant legal and financial liabilities.

• Fatal Attack in Virginia (2018): In 2018, a resident in Virginia was tragically killed by her neighbor's Pit Bull within their apartment complex. This incident underscores the potential for severe harm and even death posed by certain aggressive dog breeds when they are not properly managed or restricted.

 Severe Injury in Texas (2019): A 2019 incident in Texas involved a child who was severely injured by a Rottweiler at an apartment complex. This attack led to a lawsuit against the property management company for negligence, emphasizing the legal repercussions of failing to enforce breed restrictions and ensure the safety of residents.

 Fatal Mauling in California (2020): In 2020, a resident in an apartment complex in California was fatally mauled by a neighbor's aggressive dog. This tragic event highlighted the critical need for stringent pet policies and thorough vetting of tenants' pets to prevent such catastrophic incidents.

• Injury in Georgia (2021): In Georgia, a tenant was severely injured by a Pit Bull in their apartment complex in 2021. The victim required extensive medical treatment, and the property management company faced a lawsuit for failing to enforce breed restrictions and adequately protect residents from known dangerous animals.

 Deadly Attack in North Carolina (2022): In North Carolina, a resident was killed by a neighbor's aggressive dog at an apartment complex. The incident resulted in a high-profile lawsuit against the property management for negligence, highlighting the dire consequences of not implementing strict breed restrictions and insurance verifications.

Legal and Financial Implications: These cases illustrate the significant legal and financial risks associated with allowing unrestricted dog breeds in apartment complexes. Property management companies can be held liable for injuries or deaths resulting from dog attacks, leading to costly lawsuits and settlements. Implementing breed restrictions and verifying renters' insurance policies that cover high-risk breeds are crucial steps in mitigating these risks and ensuring the safety of all residents.

By not adhering to these common industry practices and failing to enforce breed restrictions or verify insurance coverage, MAA is potentially exposing itself and its residents to significant risks. This neglect could result in severe financial and legal

consequences, particularly if an incident involving a high-risk breed occurs on their 6/21/24, a 39 PMC ase 2:23-cv-02186-SHL-cgc Document 1005 by Filed, 06/21/24t Page 10 of 45 property. Immediate action to align MAP applicites with industry standards is necessary to protect both the company and its residents.

 Hargrove v. Grubb: This landmark case established that property owners could be held liable if they knew or should have known about the dangerous nature of a tenant's pet. In this case, the court ruled that the landlord's awareness of the pet's dangerous propensities created a duty to protect other tenants and visitors from potential harm. The failure to take appropriate action, such as implementing restrictions or removing the dangerous pet, constituted negligence on the part of the landlord.

• Donchin v. Guerrero: This case reinforced the duty of landlords to protect residents from known dangers, including dangerous animals. The court emphasized that landlords have a responsibility to ensure a safe living environment for all tenants. When a landlord is aware of a dangerous pet on the property, they must take reasonable steps to mitigate the risk, such as requiring additional insurance, enforcing breed restrictions, or even evicting the tenant with the dangerous pet if necessary.

• Uccello v. Laudenslayer: In this case, the court held that landlords have a duty to protect tenants from foreseeable harm caused by dangerous animals. The decision underscored that if a landlord is aware of a pet's aggressive behavior, they must act to prevent potential injuries. This includes implementing safety measures and potentially removing the pet if it poses a significant risk.

• Benningfield v. Zinsmeister: This case highlighted the liability of landlords for injuries caused by tenants' pets when they are aware of the animal's dangerous tendencies. The court ruled that landlords cannot ignore known risks and must take proactive measures to ensure tenant safety, reinforcing the legal principle that property owners must manage and mitigate foreseeable dangers on their properties.

• Feister v. Bosack: In this ruling, the court found that landlords could be held responsible for not taking action against known dangerous pets, particularly if the animal had a history of aggression. This case further illustrates the legal expectations for landlords to actively address and manage risks associated with dangerous pets on their properties.

These cases collectively establish a strong legal precedent that landlords must take proactive steps to manage and mitigate risks posed by dangerous pets. Failure to do so can result in significant legal liability and damages. The duty to protect tenants from known dangers, including aggressive animals, is a well-established principle in property management law. MAA's current practices of not verifying renters' insurance policies for high-risk breeds and potentially allowing dangerous pets without adequate oversight could expose the company to substantial legal risks and habilities.

Fraudulent Insurance Practices: By not verifying whether high-risk breeds are covered under renters' insurance policies, MAA may be engaging in fraudulent practices. Attempting to make residents liable for incidents involving breeds that their insurance policies explicitly exclude indicates a potential misrepresentation of the company's insurance coverage and liabilities. This misrepresentation can be viewed as a form of insurance fraud, where MAA knowingly allows residents to harbor high-risk breeds without proper coverage, thereby shifting the financial burden onto the residents. This practice is deceptive and undermines the trust of tenants and stakeholders.

 Case Law - State Farm Fire & Casualty Co. v. Knapp: This case highlighted the issue 6/21/24, a 39 px Case 2:23-cy-02186-SHL-coc Document 105-thowsfiles 06/21/24, Page 11 of 45 of misrepresentation in insurance coverage of the coverage details and ensure that all parties beneficiaries must accurately represent the coverage details and ensure that all parties are adequately informed about exclusions and limitations. MAA's failure to verify insurance for high-risk breeds and attempting to hold residents accountable for uncovered incidents mirrors the deceptive practices highlighted in this case.

Negligence and Duty of Care: MAA's failure to implement breed restrictions and verify insurance coverage demonstrates a blatant disregard for the safety and well-being of its residents. This negligence exposes MAA to significant legal liabilities and potential lawsuits from injured parties. Landlords have a legal duty of care to ensure the safety of their tenants, which includes mitigating known risks such as dangerous animals.

#### Created

Wed, 06/19/2024 - 15.42

The issues detailed below pertain to the questionable practices surrounding the long tenure of key directors, potential conflicts of interest, and the overall lack of transparency in the company's operations.

#### H. Eric Bolton Jr.

Tenure and Roles: H. Eric Bolton Jr. has served as CEO since October 2001 and Chairman since September 2002. His tenure exceeds two decades, an unusually long period for any executive role in a publicly traded company, raising substantial governance concerns.

Entrenchment and Power Consolidation: Bolton's extended tenure suggests an entrenched leadership structure where he has amassed significant power. Such consolidation of power can severely limit the board's ability to provide independent oversight. This situation is compounded by Bolton's dual role as both CEO and Chairman, a governance structure that is widely criticized for enabling unchecked executive power and hindering effective board supervision.

Lack of Critical Oversight: The entrenched leadership likely results from close personal and professional relationships developed over time between Bolton and other board members. These relationships can lead to a lack of critical evaluation of Bolton's performance and strategic decisions, effectively stifling new ideas and innovative strategies. This lack of oversight and fresh perspective is particularly dangerous in the dynamic real estate market, where adaptability and innovation are crucial for sustained success.

Questionable Business Practices: Under Bolton's leadership, there have been several instances where business practices have raised red flags. The company's financial disclosures and strategic decisions often lack transparency, making it difficult for shareholders and analysts to assess the company's true financial health and strategic direction.

#### Alan B. Graf Jr.

Tenure and Roles: Alan B. Graf Jr. has been a director at MAA since June 2002 and served as the Executive Vice President and Chief Financial Officer at FedEx until December 2020.

#### His prolonged tenure at MAA raises similar concerns regarding compromised 6/21/24, a 39 PIC ase 2:23-cv-02186-SHL-cgc Document 100 bill blow Filed 06/23/24/2014 Page 12 of 45 Independence and effective oversight. PageID 1844

Conflict of Interest and Divided Focus: Graf's simultaneous roles at other major corporations, including Nike and FedEx, pose significant conflicts of interest. His divided focus and potential loyalty to multiple entities can undermine his commitment and effectiveness as a director at MAA. This situation creates a fertile ground for potential fraudulent activities, where decisions could be influenced by interests outside of MAA, compromising the company's integrity and shareholder value.

Lack of Accountability. The extended tenure and multiple roles held by Graf suggest a dilution of accountability. Directors with such extensive commitments might not dedicate the necessary time and effort to their responsibilities at MAA, resulting in inadequate oversight and governance. This lack of accountability is particularly concerning given the complex and rapidly changing nature of the real estate market.

#### Governance and Best Practices

Absence of Board Refreshment and Term Limits: Best practices in corporate governance advocate for regular board refreshment to bring in new perspectives and prevent the risks associated with long tenures. MAA's apparent lack of term limits for its directors is a significant governance failure. This absence fosters an environment where entrenched interests can dominate, leading to poor strategic decisions and potential fraud.

#### Case Studies and Evidence.

Research by McKinsey & amp; Company indicates that companies with a mix of experienced and new board members perform better due to enhanced governance and strategic oversight. MAA's failure to implement such practices suggests a disregard for established governance standards, raising suspicions of underlying fraudulent motives.
Corporate Governance Failures: Historical examples of corporate failures, such as Enron and WorldCom, highlight the dangers of poor governance and lack of oversight. These cases demonstrate how entrenched leadership and lack of transparency can lead to catastrophic financial and legal consequences.

#### Impact on MAA

Strategic Stagnation and Market Adaptability: The long tenures of Bolton and Graf contribute to strategic stagnation, where the company may fail to adapt swiftly to market changes. This stagnation can severely impact MAA's competitiveness and innovation, critical factors for success in the real estate market.

Eroded Stakeholder Trust: Shareholders and other stakeholders are likely to view the extended tenures and governance failures as indicators of deeper issues within the company. This perception can erode trust and confidence in MAA's leadership, potentially leading to long-term damage to shareholder value and the company's market reputation.

Being a investor, I take the board composition very seriously.

Created Wed, 06/19/2024 - 15:17

Questions regarding MAA's 2020 Annual 10-K Report

## 1. Revenue Recognition

6/21/24, 8 39 PhCase 2:23-cv-02186-SHL-cgc Dootsinoont 1005-16-boowFiled 06/21/24 Page 13 of 45 Specific Details on Revenue Streams: PageID 1845

• Findings: MAA's rental revenues, which account for approximately 93% of the total revenues, are recognized in accordance with ASC Topic 842. This involves a straight-line basis over the lease term, inclusive of gross rents adjusted for concessions and bad debt. Utility reimbursements, which represent 6% of total revenues, are recognized monthly as tenants obtain control of the service. Non-lease revenues, primarily from nonrefundable fees and commissions, constitute the remaining 1%.

Questions.

o Can MAA provide specific details on the criteria and timing used to recognize revenue from rental income versus ancillary services in 2020? How does MAA ensure compliance with ASC Topic 842 and ASC Topic 606 for these revenue streams?

o How does MAA ensure that rental revenues, including adjustments for concessions and bad debt, are consistently applied and not manipulated to artificially inflate income? Reason: Revenue recognition is a common area for financial manipulation. Misstating when and how revenue is recognized can significantly impact reported earnings. Inconsistent or aggressive revenue recognition practices could indicate attempts to inflate

income or meet earnings targets fraudulently.

## 2. Bad Debt Provisions

Allowance for Credit Losses

 Findings: The adoption of ASC 2016-13 requires MAA to estimate a lifetime expected credit loss for most financial instruments, including trade receivables. However, since most of MAA's financial assets are operating lease receivables, the impact was minimal.
 Questions:

o What are the specific criteria and methodologies used by MAA to calculate allowances for bad debts? Can MAA provide detailed records showing how these provisions were determined and adjusted throughout the year?

o How does MAA ensure that the bad debt provisions are not understated, thereby artificially inflating earnings?

Reason: Understating bad debt provisions can artificially inflate earnings and misrepresent the financial health of the company. This could be particularly concerning if there are significant year-over-year changes without adequate explanation.

## 3. Capitalization of Costs

Capitalization Policies:

 Findings: The 2020 10-K provides minimal detail on the specific policies used to capitalize costs related to property acquisitions, developments, and improvements.

Questions:

o What specific policies does MAA use to capitalize costs related to property acquisitions, developments, and improvements? Can MAA provide detailed records of capitalized costs and justify their classification?

o Are there any indications that operational expenses might have been improperly capitalized to enhance reported profitability?

Reason. Improper capitalization of costs can shift expenses from the income statement to the balance sheet, thereby inflating profits. This practice can be used to meet short-term earnings targets and present a healthier financial picture than what truly exists.

#### 4. Related Party Transactions 6/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc Transparency of Transactions:

Donationer in the province of the page 14 of 45 Page 10 1846

Findings: The report lacks detailed disclosure of related party transactions for 2020.
 Questions:

o Can MAA provide a comprehensive list of all related party transactions in 2020, including the nature of these transactions and their financial impact? How does MAA ensure these transactions are conducted at arm's length and fully disclosed?

o What internal controls are in place to prevent conflicts of interest and ensure transparency in related party transactions?

Reason: Related party transactions are often scrutinized for potential conflicts of interest and self-dealing. Lack of transparency and proper disclosure can indicate attempts to hide unfavorable terms or benefits provided to insiders.

## 5. Executive Compensation

Compensation Packages:

• Findings: The report mentions executive compensation but lacks detailed justification for bonuses and stock options relative to performance metrics.

Questions:

o How does MAA determine the executive compensation packages, including bonuses and stock options? Are these based on clearly defined performance metrics, and can MAA provide detailed documentation supporting these metrics?

o Are there any significant deviations from industry standards that might indicate potential manipulation or self-dealing?

Reason: Excessive or unjustified executive compensation can indicate poor governance and potential self-dealing. If compensation is not aligned with performance, it can raise concerns about the motivations and ethics of the company's leadership.

## 6. Fair Value Measurements

Valuation Techniques:

• Findings: MAA applies ASC Topic 820 for fair value measurements but provides limited details on the assumptions and inputs used.

Questions.

o What valuation techniques does MAA use for fair value measurements of investment properties and financial instruments? Can MAA provide detailed support for the assumptions and inputs used in these valuations?

o Are there any significant discrepancies between fair value measurements and market values that could indicate potential manipulation?

Reason: Manipulating fair value measurements can significantly impact financial statements, particularly asset values and earnings. This is a critical area for ensuring that reported financials accurately reflect the company's economic reality.

## 7. Deferred Tax Assets and Liabilities

Deferred Tax Accounting:

• Findings: The report provides an overview of deferred tax assets and liabilities but lacks detailed reconciliations and explanations for significant changes.

Questions:

o How does MAA calculate and report deferred tax assets and liabilities? Can MAA provide detailed reconciliations of deferred tax items and explain any significant changes.

#### year-over-year? 6/21/24, a 39 PLCase 2:23-cv-02186-SHL-cgc Document 105-16-16-06/21/24, Page 15 of 45 o Are there any indications that deferred tax

<sup>3</sup> O Are there any indications that deferred tax liabilities understated to manipulate earnings?

Reason: Overstating deferred tax assets or understating liabilities can manipulate the reported financial position and tax expense. This can be used to manage earnings and tax obligations artificially.

8. Lease Incentives and Concessions

Lease Accounting:

• Findings: The report indicates that lease incentives are accounted for as reductions of rental revenues on a straight-line basis, but provides limited details on the extent and nature of these incentives.

· Questions:

o How does MAA account for lease incentives and concessions offered to tenants? Can MAA provide detailed records of all incentives and concessions granted in 2020 and explain how these are reflected in the financial statements?

o Are there any indications that lease incentives are being used to artificially inflate occupancy rates or rental income?

Reason: Misreporting lease incentives and concessions can overstate rental income and occupancy rates. This can be a red flag for attempting to present a more favorable financial situation than reality.

9. Contingent Liabilities

Legal and Regulatory Contingencies:

 Findings: The report briefly mentions legal proceedings and contingent liabilities but lacks detailed disclosures and valuations.

Questions:

o How does MAA identify, assess, and report contingent liabilities related to legal and regulatory matters? Can MAA provide a detailed breakdown of all contingent liabilities and the basis for their valuation?

o Are there any significant contingent liabilities that are not fully disclosed or inadequately provided for in the financial statements?

Reason: Underreporting contingent liabilities can mislead investors about the company's risk exposure and financial health. This is particularly concerning if there are significant undisclosed legal or regulatory issues

## 10. Sustainability of Dividends

Dividend Policy

• Findings: The report indicates that MAA aims to maintain its REIT status by distributing at least 90% of its taxable income but provides limited cash flow analyses and projections. The company issued \$450 million of senior notes in 2020, with dividends increasing from \$3.84 per share in 2019 to \$4.00 per share in 2020. Furthermore, the company's preferred stock has a significant dividend yield, contributing to the financial obligations.

Questions:

o How does MAA ensure the sustainability of its dividend payments, particularly in light of its REIT status requiring at least 90% distribution of taxable income? Can MAA provide detailed cash flow analyses and projections supporting its dividend policy? o Are there any indications that dividends are being paid out of capital rather than operational cash flows, potentially indicating financial distress? Specifically, is there 6/21/24, a 39 PMC ase 2:23-cv-02186-SHL-cgc Document 105-the weited 06/21/24, Page 16 of 45 evidence that dividends are being financed though subsidiaries, new investments,

preferred stock issuances, or Senior Unsecured Notes Offering? o What portion of the dividends paid in 2020 were covered by operational cash flows versus financing activities such as issuing new debt or equity? Can MAA provide a detailed reconciliation of cash flows used for dividend payments?

o How does MAA account for and report the cash flows from these different sources used for dividend payments in its financial statements? Are there any discrepancies or unusual trends in these cash flows?

Reason: Paying dividends from capital rather than operational cash flows can be a major red flag indicating financial distress or unsustainable business practices. This is critical for maintaining REIT status and investor confidence. The use of financing activities such as issuing new debt or equity to pay dividends can mask underlying financial problems and create a misleading picture of the company's financial health.

Justifications Based on Findings:

1. Senior Unsecured Notes and Debt Instruments:

o In 2020, MAA issued \$450 million of senior unsecured notes with a coupon rate of 1.7%, reflecting a substantial portion of the company's financing activities. These notes have implications for the company's liquidity and financial obligations, particularly in terms of servicing debt while maintaining dividend payments.

2. Preferred Stock:

o MAA's outstanding preferred stock, specifically the Series I, has a high dividend yield of 8.50%, contributing to substantial dividend obligations. The liquidation preference for this stock is \$43.4 million, which adds to the company's financial commitments .

3. Commercial Paper Program.

o The establishment of an unsecured commercial paper program, with \$172 million outstanding as of December 31, 2020, indicates reliance on short-term borrowings for liquidity management. The use of such instruments to support dividend payments could signal financial stress if operational cash flows are insufficient.

4. Equity Transactions:

o The company's Direct Stock Purchase and Distribution Reinvestment Plan (DRSPP) allows reinvestment of distributions into common stock, indicating an alternative method to manage dividend payouts through equity financing.

5. Taxable Composition of Distributions:

o For tax purposes, the composition of dividends paid includes ordinary income and return of capital. In 2020, a significant portion of the dividends paid was classified as ordinary income, with implications for the company's taxable income calculations and dividend sustainability.

Expanded Questions with Context:

Operational Cash Flows vs. Financing Activities:

o Can MAA provide a breakdown of the cash flows used to fund the 2020 dividend payments, distinguishing between operational cash flows and those sourced from financing activities like new debt issuances or equity sales? What percentage of the total dividends paid were sourced from non-operational activities?

Use of Subsidiaries and Investments:

o Are dividends being paid out of cash flows generated by subsidiaries or new

investments? If so, can MAA provide detailed financial statements for these subsidiaries 6/21/24, a 39 PM Case 2:23-cv-02186-SHL-coc Document 105-it how Filed 06/21/24, Page 17 of 45 and investments to verify their profitability and reaction capabilities?

Issuance of Preferred Stock and Senior Unsecured Notes:

o How much of the proceeds from the issuance of preferred stock and Senior Unsecured.
 Notes in 2020 were used directly or indirectly to support dividend payments? Can MAA provide detailed accounting records and justifications for these allocations?
 Impact of Debt Servicing on Dividend Payments:

o With significant debt obligations from the issuance of senior notes and commercial paper, how does MAA balance debt servicing with the requirement to pay dividends? Can MAA provide projections and stress tests showing their ability to meet both obligations under various economic scenarios?

#### Created

Tue, 06/18/2024 - 17:28

Good afternoon! I still have a long list of questions regarding the details of your revenue breakdown, regional performance, and overall financial transparency. These questions are critical for a comprehensive understanding of MAA's operations and to ensure full transparency and compliance with financial reporting standards. I will continue to review your disclosures and update my list of inquiries daily over the next several weeks within this whistleblower submission. Your detailed responses will be greatly appreciated to address these concerns effectively. Thank you for your cooperation. Have a blessed day!

#### Documents

6-18-24 - Michael Kapellas - Former attorney Bass Berry & Sims Court Judicial Law Clerk writing orders at Western Tennesee COurt.pdf (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2024-06-18/6-18-24%20-%20Michael%20Kapellas%20-%20Former%20attomey%20Bass%20Berry%20%26%20Sims%20Court%20Judicial%20Law%20Clerk %20writing%20orders%20at%20Western%20Tennesee%20COurt.pdf?language=en)

23.38 MB

#### Created

Tue, 06/18/2024 - 11:08

Revenue Breakdown and Transparency Detailed Regional Revenue Breakdown:

Your presentation mentions significant investments in various regions, including the Sunbelt, but does not provide a detailed regional revenue breakdown. Why is this information not explicitly provided? Could this omission be an attempt to obscure underperformance in certain regions? Revenue and NOI Segmentation:

According to your 2023 Annual 10-K report, total rental and other property revenues were \$2,148,468,000, with Same Store revenues of \$2,024,751,000 and Non-Same Store and Other revenues of \$123,717,000. However, these figures are not broken down by geographic region. Is there a reason for this lack of detail? Could it be to mask financial discrepancies?

Comparison to Industry Standards:

Industry standards typically include detailed geographic revenue breakdowns, which help 6/21/24, a 39 PK ase 2:23-cv-02186-SHL-coc Document 105-Leow-field 06/21/24, Page 18 of 45 Investors gauge market-specific risks apageneor by the second of the second

The absence of regional revenue data could potentially mask financial issues such as inflated revenues or underperforming assets. How can investors verify the accuracy of your overall financial health and operational performance without this critical information? Transparency and Trust:

Transparency in financial reporting is crucial for maintaining investor trust. The lack of regional revenue details could lead to speculation about the accuracy and integrity of your financial statements. What steps is MAA taking to ensure that all financial data is fully transparent and verifiable?

Geographic Revenue Contribution:

Your documents mention properties and markets such as MAA Robinson in Orlando, FL, yet there is no clear indication of their specific revenue contributions. How do you ensure that revenues attributed to these areas are accurately reported and not exaggerated to create an overly positive outlook?

Revenue Growth and Regional Disparities:

The presentation highlights overall revenue growth but lacks specifics on how this growth is distributed across regions. Can you provide a detailed analysis of how revenue growth varies by region? How do you address potential disparities in revenue growth rates between different geographic areas? Impact of Regional Economic Conditions:

Different regions face varying economic conditions, which can significantly impact revenue performance. How do you account for these regional economic differences in your revenue reporting? Are there any concerns that revenues from economically weaker regions are being disproportionately represented? Verification and Consistency:

How do you ensure consistency and accuracy in revenue reporting across different regions? Are there third-party audits or internal verification processes to confirm that the reported figures are not manipulated? Without independent verification, how can investors be sure that the revenue figures are not being adjusted to meet internal targets or mislead investors?

Regulatory Compliance:

Ensuring full transparency in revenue reporting is crucial for regulatory compliance. How does MAA ensure compliance with SEC regulations regarding revenue reporting by region? Are there any ongoing or past investigations into your regional revenue reporting practices?

Created Tue, 06/18/2024 - 10:56 Following your presentation at the NAREIT conference, I have some guestions I'd like to 6/21/24, a 39, PMC ase 2723-cv-02186-SHL-cgc, Document il betweet tech 06/21/24, Page 19 of 45 discuss further. I would appreciate it if page in the following:

Annual Compounded Total Shareholder Returns (TSR):

Your presentation claims that MAA's TSR over various periods significantly outperforms peers, with figures such as:

5 Years: MAA - 6.9%, Peer Average - 1.3%

10 Years: MAA - 10.2%, Peer Average - 7.0%

15 Years: MAA - 12.9%, Peer Average - 12.8%

20 Years MAA - 11.8%, Peer Average - 9.7%

Could you provide a detailed breakdown of the methodologies and assumptions used for these calculations? How do you ensure these TSR figures are not artificially inflated through the use of shell companies or undisclosed related-party transactions? Comparison with Peers:

The peer group you compare against includes AvalonBay Communities (AVB), Camden Property Trust (CPT), Equity Residential (EQR), Essex Property Trust (ESS), and UDR, Inc. (UDR).

Can you explain the criteria for selecting these peers? How do you guarantee that your performance metrics are genuinely comparable and not skewed by excluding relevant competitors or through selective reporting?

Core FFO per Share Growth:

The presentation forecasts a 5-year compounded annual growth rate (CAGR) of Core FFO per Share at 6.7%.

What are the specific assumptions and factors driving this growth forecast? How do you verify that these projections are not based on overly optimistic assumptions or manipulated through internal accounting practices? Dividend Payments:

MAA has maintained a consistent track record of dividend payments, never suspended or reduced.

Given the pressures on REITs to maintain distributions, how does MAA ensure the sustainability of these payments without resorting to financing dividends through debt or other non-operational cash flows?

Market Cap and Financial Metrics:

The presentation lists MAA's total market cap at \$20.4 billion.

Can you provide a detailed analysis of how this market cap is determined and how it compares to peers over the same periods? Are there any financial engineering practices or off-balance-sheet entities involved in maintaining this valuation? Cap Rate and FFO Multiple Discrepancies:

MAA's FFO multiple (13.7) is reported to be lower than the sector average (15.2), and there's mention of an implied cap rate spread.

Could you clarify the discrepancy between these metrics and your superior performance claims? Is there any risk that these figures are manipulated through non-transparent financial practices?

Redevelopment and Repositioning ROI:

#### Significant investments in redevelopment and repositioning programs are highlighted as 6/21/24, a 39 PMC ase 2:23-cv-02186-SHL-cgc Doutineont 1005 Selection of 100 Page 20 of 45 drivers of long-term value. Page 10 1852

Can you disclose the historical ROI for these initiatives and explain how these figures are integrated into long-term TSR calculations? How do you ensure these projects are not being used to hide operational inefficiencies or inflate asset values? Rent Price Positioning:

MAA's rent profile is presented as being below recent deliveries, driving demand. How does this pricing strategy impact overall revenue growth, especially in fluctuating markets? Are there any concerns that rent concessions or hidden incentives are being used to artificially maintain occupancy rates? Sustainability Initiatives:

Sustainability initiatives, such as energy efficiency improvements, are expected to enhance NOI.

Can you provide specific metrics and timelines for these initiatives? How do you verify that the claimed financial benefits are real and not exaggerated for marketing purposes? Economic Uncertainty and Interest Rates:

Rising interest rates and economic uncertainty are mentioned as potential challenges. How does MAA plan to safeguard long-term shareholder returns against these risks? Are there any undisclosed stress tests or scenario analyses conducted? How do you ensure that these safeguards are not superficial measures to appease investors?

### Created

Tue, 06/18/2024 - 10:30

Here's a list of notable antitrust cases highlighting the substantial legal consequences faced by executives involved in antitrust violations:

United States v. Andreas et al. (1999)

Summary: Top executives at Archer Daniels Midland (ADM) engaged in a price-fixing conspiracy concerning lysine, an animal feed additive. A key aspect of the case involved an ADM executive who secretly collaborated with the Department of Justice (DOJ), providing crucial evidence that led to the convictions.

Outcome: Three senior executives, including the vice president, received prison sentences, showcasing the severity of penalties for price-fixing and collusion. United States v. AU Optronics Corporation et al. (2012)

Summary. Several liquid crystal display (LCD) panel manufacturers conspired to fix prices. Outcome: Two high-ranking executives were sentenced to three years in prison, and the company was fined a staggering \$500 million, demonstrating the substantial repercussions for both individuals and corporations involved in price-fixing schemes. United States v. Norris (2011)

Summary: Ian Norris, the former CEO of Morgan Crucible, faced charges of obstructing justice in a price-fixing investigation

Outcome: Norris was extradited from the UK to the U.S. and served 18 months in prison,

#### emphasizing the global reach of antitrust enforcement and the seriousness of obstructing 6/21/24, a 39 ptCase 2:23-cv-02186-SHL-cgc Document (1005) blow Filed: 06/25//244 Page 21 of 45 Investigations. PageID 1853

United States v. Taubman (2002)

Summary: A. Alfred Taubman, the former chairman of Sotheby's, colluded with Christie's to fix commission prices at art auctions.

Outcome: Taubman was convicted and served ten months in prison, highlighting that antitrust laws apply to diverse industries, including the high-end art market. United States v. Fastow (2004)

Summary<sup>-</sup> Andrew Fastow, the CFO of Enron, faced multiple charges related to the Enron scandal, including conspiracy to commit securities fraud. While not strictly an antitrust case, it demonstrates the interconnectedness of financial crimes and the potential for executives to be held accountable for a wide range of illegal activities.

Outcome: Fastow received a six-year prison sentence after accepting a plea deal, a stark reminder of the consequences for executives who engage in financial misconduct. United States v. Joseph Giraudo et al. (2019)

Summary: This case involved a bid-rigging conspiracy at public foreclosure auctions. Outcome: Joseph Giraudo and other participants faced legal consequences, including fines and community confinement, underscoring the illegality of manipulating auction processes to gain unfair advantages.

These cases serve as powerful deterrents against anti-competitive behavior and highlight the importance of ethical conduct and adherence to antitrust laws in the corporate world. They demonstrate that executives are not immune from prosecution and can face significant penalties, including imprisonment and hefty fines, for their roles in violating antitrust regulations.

### Created

Tue, 06/18/2024 - 10:23

Focusing on cases that directly relate to issues of corporate governance, whistleblower mishandling, and inadequate financial disclosures, here are some relevant precedents that may pertain to MAA:

Digital Realty Trust, Inc. v Somers (2018): This Supreme Court decision clarified the scope of whistleblower protections under the Dodd-Frank Act, emphasizing the importance of reporting violations directly to the SEC for legal protection. This case is directly relevant to MAA's management of its whistleblower hotline and its obligation to protect those who report potential wrongdoing.

Halliburton Co. v. Erica P. John Fund, Inc. (2014): This case reaffirms the "fraud-on-themarket" theory, which allows investors to presume reliance on the market price in securities fraud cases. It underscores the critical importance of MAA's accurate corporate disclosures and the potential impact of misstatements on investor decisions

SEC v. WorldCorn, Inc.: The WorldCorn accounting fraud scandal, one of the largest in history, led to significant changes in governance regulations, including the Sarbanes-Oxley Act. This case highlights the need for rigorous internal controls and accurate financial

# reporting at MAA, as any financial misstatements could have severe legal and financial 6/21/24, a 39 P/Case 2:23-cv-02186-SHL-cgc D/004m00Atr 1005etbolowFritect 06/23/24/24 Page 22 of 45 repercussions. PageID 1854

In re McKesson HBOC, Inc. Securities Litigation: This case, involving allegations of accounting irregularities and financial misstatements, resulted in a substantial settlement. It serves as a cautionary tale for MAA, emphasizing the need for transparent and accurate financial reporting to avoid legal scrutiny and potential financial losses.

Siemens AG Bribery Scandal (SEC v. Siemens AG): The Siemens case, involving extensive bribery and corruption in violation of the Foreign Corrupt Practices Act (FCPA), highlights the importance of ethical corporate behavior. It underscores the necessity for MAA to maintain a stringent compliance program to prevent corruption and ensure ethical interactions with all stakeholders.

These cases collectively underscore the importance of robust governance frameworks, ethical compliance programs, and the proper management of whistleblower systems. They serve as reminders of the potential legal and financial repercussions that can arise from failing to adhere to established laws and regulations concerning corporate governance and ethics. By understanding these legal precedents, MAA can better assess its own practices and ensure compliance with the highest standards of corporate governance and ethical conduct.

#### Created

Tue, 06/18/2024 - 10:17

Additionally, I am compelled to express concerns regarding discrepancies and potential governance and ethics oversight issues at Mid-America Apartment Communities, Inc. (MAA). Of particular note is the inconsistency in the reported tenure of Ms. Leslie B.C. Wolfgang is listed as the Senior VP, Chief Ethics & amp; Compliance Officer, and Corporate Secretary of MAA. While documents obtained during the America First acquisition in 1995-96 reference Ms. Wolfgang, the MAA website indicates she joined the company in 2000. This discrepancy raises significant questions about the transparency and accuracy of MAA's historical and current disclosures. It potentially violates Rule 10b-5 of the Securities Exchange Act of 1934, which mandates the disclosure of any material fact necessary to prevent statements from being misleading.

Furthermore, Ms. Wolfgang's extensive responsibilities, including managing the whistleblower hotline, handling communication sent to the board of directors, and overseeing the ethics program while appearing prominently on nearly every ethics and compliance document, concentrate considerable power in her position. While efficient, this centralization raises concerns about potential conflicts of interest, particularly concerning the aforementioned discrepancies. This is especially pertinent given the landmark case of Dirks v. SEC, where the Supreme Court emphasized the importance of addressing potential conflicts of interest to ensure the market's integrity

The Sarbanes-Oxley Act (SOX) Section 301 and Dodd-Frank Act Section 922 underscore the necessity of independent and effective oversight mechanisms in managing whistleblower complaints and ensuring ethical conduct. These laws require transparency in processes and robust protections to prevent retaliation against whistleblowers, further underscoring the need for rigorous checks and balances in roles overseeing corporate 6/21/24, 8 39 PMCase 2:23-cv-02186-SHL-coc Dominant, 105-il-blowFiled, 06/21/24, Page 23 of 45 ethics and compliance The Digital Reality 1195 case exemplifies the importance of these protections, where a whistleblower successfully sued the company for retaliation.

Given Ms. Wolfgang's pivotal role in upholding MAA's ethical standards and ensuring compliance with regulatory authorities, these inconsistencies could undermine the effectiveness of MAA's compliance and ethics framework. Section 404 of the Sarbanes-Oxley Act mandates a comprehensive annual evaluation of internal controls over financial reporting, which should be conducted with the utmost diligence and transparency to affirm the reliability of financial statements.

To maintain investor confidence and uphold principles of good corporate governance, I urge MAA to promptly and transparently address these concerns. A thorough review and clarification of these discrepancies are warranted to ensure that the governance frameworks are robust, transparent, and free from potential conflicts of interest. MAA's commitment to these principles will be instrumental in reinforcing trust among stakeholders and ensuring compliance with relevant securities laws.

#### Created

Tue, 06/18/2024 - 09:59

As a shareholder of Mid-America Apartment Communities, Inc. (MAA), I hold a vested interest in the company's adherence to the highest standards of transparency and accuracy in all financial communications and disclosures. U.S. securities laws, specifically designed to protect investors, mandate that companies like MAA provide truthful and comprehensive information regarding their financial performance and management.

The Securities Exchange Act of 1934, with its pivotal Section 10(b) and Rule 10b-5, explicitly prohibits any form of deception, manipulation, or fraud in securities trading. This rule is the bedrock of investor protection, ensuring that MAA's statements are free from falsehoods or omissions that could mislead stakeholders. It underscores the critical importance of honesty and integrity in all financial communications, which are essential for maintaining investor trust and the overall stability of the market.

Further reinforcing these expectations, the Sarbanes-Oxley Act of 2002, through Sections 302 and 404, places a direct responsibility on senior executives to personally certify the accuracy of financial reports and to establish robust internal controls over financial reporting. These provisions are instrumental in enhancing transparency and accountability, ensuring that MAA's financial statements are a true and fair representation of the company's financial condition.

The Securities Act of 1933 further bolsters these standards by requiring comprehensive disclosure during securities offerings, effectively preventing misrepresentation and fraud in MAA's disclosures to the public and potential investors. This allows investors to make informed decisions based on a clear understanding of the company's financial health and prospects, fostering trust in MAA's financial practices.

Given this comprehensive legal framework, I strongly urge MAA to ensure meticulous compliance with these laws in all future disclosures and reporting. It is imperative that the company provides detailed methodologies and specific findings in its evaluations of

internal controls and financial reporting processes. Such transparency not only fulfills 6/21/24, a 39 Pt Case 2:23-cv-02186-SHL-cgc ... Document, 105-14-16-06/21/24, Page 24 of 45 legal obligations but also aligns with the period state of the pe

By fully embracing these responsibilities, MAA will not only enhance its transparency and investor confidence but also solidify its reputation as a trustworthy and responsible corporate entity, ensuring its long-term success in the marketplace.

#### Created Mon, 06/17/2024 - 21.50

I would also like to express concern in MAA's internal controls over financial reporting (ICFR) and disclosure procedures, as evidenced by the company's 10-K filings for the year ended December 31, 2023. I believe these deficiencies constitute potential violations of SEC disclosure requirements and pose a substantial risk to the accuracy and reliability of MAA's financial reporting, thereby misleading investors and hindering their ability to make informed decisions.

### Specific concerns I have

## 1. Insufficient Disclosure of ICFR Assessment:

MAA's disclosures regarding the management's assessment of Internal Control over Financial Reporting (ICFR) significantly lack the depth and transparency mandated by SEC regulations. While management asserts the effectiveness of controls, they provide no detailed description of the assessment process, the control frameworks applied, or specific evaluation results. This deficiency in disclosure not only undermines the credibility of the assessment but also prevents shareholders and potential investors from understanding the rigour and thoroughness of MAA's ICFR assessments. Under the SEC's rules, particularly the requirements set forth in the Sarbanes-Oxley Act, companies are expected to provide a comprehensive disclosure of their internal control assessment processes that include discussing the frameworks used (such as COSO), and the results of these evaluations. The absence of such critical information obscures the true state of MAA's internal controls from its investors and may conceal potential vulnerabilities within its financial reporting processes.

## 2. Lack of Specific Findings in Auditor's Attestation.

The independent auditor's attestation, while affirming the effectiveness of MAA's ICFR, fails conspicuously to detail specific findings or identify any issues. This omission not only skirts the spirit of the SEC's requirements for detailed and transparent disclosure but also raises serious concerns about the audit's thoroughness and whether any potential weaknesses within the internal controls have been adequately identified and addressed According to SEC guidelines and the standards set by the Public Company Accounting Oversight Board (PCAOB), audit reports should provide sufficient detail to give stakeholders a clear understanding of the scope of the audit, the audit procedures performed, and any issues uncovered during the process. The lack of such detail in the auditor's report could mislead investors about the effectiveness of MAA's internal controls and the reliability of its financial statements.

## 3. Inadequate Disclosure of Changes to ICFR:

<sup>6/21/24, a 39 pc Case 2:23 cv -02186-SHL-coc<sup>---</sup> Document, 105 to write 06/21/24, Page 25 of 45 MAA's assertion that there were no make full phases to its ICFR during the reporting period, without accompanying evidence or detailed documentation, constitutes a potential breach of SEC regulations that require explicit disclosure of any significant changes to internal controls that might materially affect the ICFR. This gap in disclosure prevents investors from understanding the dynamics of the company's control environment and assessing the impact of any changes that might have occurred. Under the Sarbanes-Oxley Act, it is imperative that all material modifications to the internal control system are thoroughly documented and disclosed to ensure full transparency and maintain investor confidence in the integrity of financial reporting</sup>

## 4. Opaque Disclosure of Testing and Controls:

The disclosures in the 10-K filings lack clarity regarding which specific financial controls were subject to audit, as well as the detailed findings and tests performed. This lack of specificity significantly impedes stakeholders' ability to gauge the effectiveness of MAA's ICFR, understand the scope of the testing conducted, and evaluate the robustness of the company's financial reporting. Transparent disclosure of audit tests and findings is crucial as it provides investors with the necessary insights to make informed assessments about the company's financial health and operational integrity.

#### Created

Mon, 06/17/2024 - 19:05

I would like to address additional concerns within Mid-America Apartment Communities, Inc. (MAA) that I believe may constitute serious issues regarding financial integrity, risk management, and regulatory compliance. My complaints are centered on potential misrepresentations in financial reporting, inadequacies in internal controls, and possible non-compliance with legal standards.

### 1. Use of Non-GAAP Financial Measures:

I am concerned about MAA's extensive reliance on non-GAAP financial measures such as Adjusted EBITDAre and Core FFO. This practice raises substantial questions about the transparency of financial disclosures, potentially obscuring the company's true financial health and misleading stakeholders.

## 2. Cybersecurity and ESG Risk Management:

There appears to be a lack of detailed evidence supporting the effectiveness of the company's cybersecurity and ESG risk management efforts. I question whether these critical operational risks are being properly identified, assessed, managed, and disclosed, potentially leading to significant compliance risks.

### 3. Internal Controls Over Financial Reporting.

I suspect that internal controls over financial reporting may be inadequate or have failed, which could significantly impact the accuracy and reliability of MAA's financial statements. This concern is particularly alarming if true, as it directly affects the integrity of financial reporting.

### Debt Management and Financial Risk:

5. Geographic Concentration Risks.

The concentration of operations in specific geographic markets could expose the company to localized economic downturns. I am concerned that these risks may not be fully disclosed or adequately managed.

6. Compliance with Legal and Regulatory Requirements:

I suspect potential non-compliance with laws and regulations that govern financial reporting and real estate operations. This includes potential failures to meet SEC requirements, which could have severe implications for the company and its stakeholders.

#### Additional Inquiry:

To better understand the governance context of these issues, I also inquire about the tenure of the Audit Committee Chair, Mr. Alan Graf Jr., which is pertinent to assessing the committee's long-term effectiveness. I feel disclosures are more general and the lack of information is intentional.

#### Documents

MAA.png (https://www.whistleblowerservices.com/maa/system/files-	341.26 KB
encrypted/whistleblower/documents/2024-06-17/MAA png2language=en)	

#### Created

Mon, 06/17/2024 - 18:48

Please look into the two 2015 case studies referenced on the Baker Donelson website in association with Mid-America Apartment Communities, Inc. (MAA). The documents provided, titled "Debt Transaction" and "Equity Transaction," are merely summaries of financial offerings and do not constitute comprehensive case studies as one would reasonably expect.

My prior requests for these detailed case study reports, along with any associated submissions to the Securities and Exchange Commission (SEC), remain unfulfilled. This lack of transparency raises serious questions, further compounded by the involvement of Mr. Delpriore, your EVP of General Counsel, given his previous employment with Baker Donelson.

The absence of these comprehensive case studies obstructs a thorough assessment of the potential influence these findings had on MAA's strategic decisions. Given the potential ramifications of incomplete disclosures on investor decisions and the integrity of financial markets, I demand the following information be provided forthwith:

1. Detailed Case Study Reports: Full reports encompassing objectives, methodologies, and outcomes.

2. Supporting Documentation: All related documents, presentations, and materials.

3. SEC Communications. Any communications or filings with the SEC concerning these studies.

4 Legal Oversight:

o Detailed information on Mr. Delphore's role and contributions in these studies.

# o Names and affiliations of all attorneys involved. 6/21/24, a 39 PhCase 2:23-cv-02186-SHL-cgc Dougandon file to book file

o Locations and modes of publication or listing of these studies.

o Access to any internal repositories containing these documents.

The presentation of these transaction summaries as "case studies" on Baker Donelson's website could be construed as a tactic to enhance MAA's image and credibility in advance of the merger with Post Properties. By showcasing these transactions, MAA may be attempting to highlight their financial stability and attractiveness to potential investors or merger partners. The absence of comprehensive case studies raises concerns about the transparency and accuracy of the information presented, potentially misleading stakeholders about the true nature and complexity of these transactions.

#### Documents

mid-america-apartments-lp.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-06-17/mid-america-apartments-lp.pdf?janguage=en}	1.43 MB
mid-america-apartment-communities-inc.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-06-17/mid-america-apartment-communities-inc.pdf? [anguage=en]	1,43 MB

## Created

Mon, 06/17/2024 - 18 47

I have concerns regarding the current operational dynamics between the Audit Committee and management of Mid-America Apartment Communities, Inc. (MAA). It has come to my attention through the review of the Audit Committee Charter that the Committee may be unduly reliant on information and financial statements prepared by management, without sufficient independent verification or critical assessment.

The Charter stipulates that the Audit Committee is not directly responsible for preparing financial statements or conducting audits. Instead, it acknowledges that management and the independent public accounting firm possess more detailed knowledge of the company's financials. While this division of responsibilities is standard, it inherently suggests that the Audit Committee might rely extensively on presentations and data provided by management. This could potentially lead to oversight challenges, particularly if the information provided by management is not subject to rigorous, independent verification by the Committee.

Given the critical role of the Audit Committee in ensuring the integrity of financial reporting and internal controls, I kindly request detailed information on the following:

1. Audit of Internal Controls:

o Please provide comprehensive details on how the internal controls of MAA were audited by your external accounting firm. This should include the scope of the audit, the methodologies employed, and the findings of such audits.

2. I would appreciate detailed information on the measures in place to ensure the independence of the external auditors, particularly in scenarios where their work might be influenced by management or individuals like Scott Andress, who, after serving as a partner at EY for 20 years, is now the Senior VP of IT Operations at MAA.Audit of the Insurance Program:

o Additionally, I request detailed information on how MAA's insurance program has been

audited to ensure proper internal controls are in place. This includes the processing of 6/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Document 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:23-cv-02186-SHL-cgc. Documents 105-15-000 Files 06/21/24, a 39 PLC ase 2:25-000 Files 06/21/24, a 30 PLC ase 2:25-000 F

last several years, dating back to 2009, outlining the scope, frequency, and results of these audits.

3. Independent Verification Processes:

o What processes are in place to ensure that the Audit Committee conducts a critical assessment of the financial information provided by management?

o How does the Audit Committee verify the accuracy and completeness of the financial statements before they are approved?

4. Communication Between the Audit Committee and External Auditors:

o How frequently does the Audit Committee meet independently with the external auditors without the presence of management2

o What are the protocols for these meetings, and how are the findings from these sessions documented and acted upon?

The concerns highlighted here are submitted under the whistleblower protection guidelines, as I believe they address significant issues that could potentially affect the interests of shareholders and the public. The reliance on management's presentations without sufficient independent audit oversight may not align with best practices in corporate governance and financial reporting

Thank you for addressing these concerns. I look forward to your prompt and detailed response, which I hope will clarify the measures in place to ensure the thoroughness and independence of the Audit Committee's oversight functions.

#### Documents

\_\_\_Audit-Committee-Charter.3-22-2022.pdf (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2024-06-17/\_\_\_Audit-Committee-Charter.3-22-2022.pdf? 210.56 KB language=en\_\_\_

# Created

Mon, 06/17/2024 - 18:39

Board of Directors Communication

#### Documents

Communications-with-Board-of-Directors.pdf (https://www.whistleblowerservices.com/mae/system/filesencrypted/whistleblower/documents/2024-06-17/Communications-with-Board-of-Directors.pdf? language=en) 18.97 KB

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Mon, 06/17/2024 - 18:38

I am expressing a concern regarding the integrity of the current whistleblower reporting system at Mid-America Apartment Communities, Inc. (MAA), particularly in cases involving senior management such as the Corporate Secretary, Ms. Leslie Wolfgang. It has come to my attention that communications intended for the Board, including those that should be confidential and handled with utmost discretion, are being routed through the office of Ms. Wolfgang, who is presently implicated in the allegations I wish to report.

The nature of these allegations, which suggest potential fraud, necessitates a reporting 6/21/24, a 39 phCase, 2:23-cv-02186-SHL-cgc. Document 105 the own files, 06/21/24, a page, 29 of 45 mechanism that bypasses any potentially conjugation of administrative channels. The Sarbanes-Oxley Act of 2002 mandates public companies to facilitate a way for employees to submit concerns regarding questionable accounting or auditing matters directly to the audit committee, confidentially and anonymously if desired. Given the serious potential for conflict of interest in routing sensitive communications through the office of an implicated party, I find the current structure inadequate for my needs as a whistleblower

Therefore, I respectfully request the establishment of an alternative communication channel that is directly accessible to the Board of Directors or the Audit Committee without intermediary filtering by company employees potentially involved in the issues being reported. This would not only align with the best practices outlined by Sarbanes-Oxley but also reinforce the company's commitment to ethical governance and transparency.

#### Created

Mon, 06/17/2024 - 17.51

In addition to the concerns outlined above, for which I have attached documentation demonstrating the conflict of interest and MAA is aware, there has been a breach of the proper judicial process. As stated above, despite repeated requests, I have not received the "properly formatted" report that Glenn Russell promised me in 2021. This ongoing failure to provide the requested documentation raises significant concerns about the transparency and accountability within MAA's reporting processes. It suggests neglect in addressing valid requests for information, which is essential for maintaining trust and compliance.

Moreover, as MAA and its executives, SVP of ethics and other key employees know, a severe conflict of interest involves MAA's attorney, Paige Mills, Bass, Berry & amp; Sims PLC, and Judicial Law Clerk, Michael Kapallas. Bass, Berry & amp; Sims PLC previously employed both individuals and have known each other personally and professionally before the current case. This prior relationship suggests a potential for bias and improper influence within the judicial process, undermining the integrity of legal proceedings. The possibility of collusion is further supported by a review of metadata in PACER, which indicates that Mills and Kapallas have worked together on other cases, demonstrating a pattern of unprofessional conduct that could compromise the fairness of the proceedings.

Additionally, the involvement of Robert Delpriore, MAA's EVP of General Counsel, further complicates this issue. Bass, Berry & amp; Sims PLC also previously employed Delpriore and has been associated with MAA since 2003. This long-standing connection raises further concerns about the potential for conflicts of interest and the impartiality of legal and corporate governance. The overlap in professional histories among these key figures suggests a network of relationships that could unduly influence MAA's legal strategies and decision-making processes, calling into question the overall integrity and objectivity of the organization's operations.

These issues collectively highlight a troubling pattern of potential misconduct and lack of

transparency that warrants immediate and thorough investigation. It is imperative for MAA 6/21/24, a 39 pMC ase 2:23-cv-02186-SHL-cgc Document 106 the More that all operations and to address these concerns promptly to age 1652 and ensure that all operations and

legal proceedings are conducted with the highest standards of integrity and fairness.

Additionally, I have several other concerns regarding MAA's financial practices over the past two years. The following points outline specific areas that require detailed clarification and supporting documentation:

Revenue Recognition from New Acquisitions:

Request: Provide detailed documentation supporting the revenue recognized from new acquisitions in the past two years.

Concern: The financial reports show a significant increase in revenue, from \$2.020 billion in 2022 to \$2.148 billion in 2023. However, specific details on revenue contributions from recent acquisitions are unclear. Property-specific revenue records and justifications for the revenue reported are necessary for a thorough review. Redevelopment Project Costs:

Request: How were the costs for redevelopment projects determined, and can you provide invoices or contracts for these expenses?

Concern: Capital expenditures for redevelopment increased notably, from \$154 million in 2021 to \$194.9 million in 2022, and further to \$208.4 million in 2023. Detailed invoices and contracts are required to verify the legitimacy and appropriateness of these costs, especially given the substantial year-over-year increase.

Off-Balance-Sheet Liabilities and Financing Arrangements:

Request: Are there any off-balance-sheet liabilities or financing arrangements not disclosed in the financial statements?

Concern: The total debt as of March 31, 2023, was \$4.4 billion, with a slight increase to \$4.5 billion by the end of 2023. Full disclosure of any off-balance-sheet items is essential to ensure an accurate financial position is presented. Dividend Increases:

Request. What is the rationale behind the recent dividend increases, and how are they supported by the company's cash flows?

Concern: The annual dividend rate increased from \$4 675 per share in 2022 to \$5 60 per share in 2023, despite a decrease in net income from \$637.44 million in 2022 to \$552.81 million in 2023. A detailed explanation and cash flow analysis are necessary to justify these increases.

Occupancy Reports and Lease Agreements:

Request: Can you provide detailed occupancy reports and lease agreements to support the reported occupancy rates and rental income increases?

Concern: Reported physical occupancy rates, such as 89.8% for some properties, need to be verified against rental income growth. Comprehensive occupancy data and lease documentation are needed to clarify these discrepancies.

Documentation of Non-Recurring Expenses:

Request. How are non-recurring expenses documented, and what controls are in place to ensure their accuracy?

Concern: Non-recurring expenses, such as the increase in recurring capital expenditures

from \$81.1 million in 2021 to \$98.2 million in 2022 and further to \$111.7 million in 2023, <sup>6/21/24, a 39 PACase 2:23-cv-02186-SHL-cgc Document 105-16 head thorough documentation to ensure age 150 to 58 by the proper internal controls. Independent Appraisals for Property Valuations:</sup>

Request. Can you provide independent appraisals for recently acquired or disposed properties to support the reported values?

Concern: Property valuations, including the disposal of two multifamily communities for \$167 million with a recognized gain of \$132 million in June 2022, need independent verification to ensure accuracy

Key Assumptions in Financial Estimates:

Request. What are the key assumptions used in your financial estimates, and how do they compare to industry benchmarks?

Concern: Assumptions for financial metrics such as EBITDA margins, which were 59.23% in 2023 compared to 65.84% in 2022, need detailed justification and comparison to industry standards.

These points should be addressed to ensure full transparency and integrity in MAA's financial reporting. Your prompt attention to these concerns, along with the requested documentation, will greatly assist in resolving these issues.

# Created

Mon, 06/17/2024 - 17:12

You think you can take advantage of countless employees and residents and get away with it with no repercussions. That is not happening. The entire company, MAA, is hyperbole. The grandiose claims and exaggerated promises made by MAA do not align with the reality experienced by its customers and stakeholders. This disconnect not only undermines trust but also calls into question the integrity of the company's communications and practices. I am aware that Bass, Berry & amp; Sims PLC does not review your financials, by the way.

# Created

Mon, 06/17/2024 - 17.06

I have thoroughly reviewed the court order, and it is clear that MAA has engaged in actions that are highly questionable and potentially fraudulent. I am confident that the Department of Justice (DOJ) is currently investigating these matters. Until I receive a comprehensive report addressing my concerns, I will continue to submit new, accurate complaints through the whistleblower hotline, referencing this submission number.

I am holding Glenn Russell, Leslie Wolfgang, Eric Bolton, Al Campbell, Tom Grimes, and Timothy Argo personally responsible for the fraudulent activities at MAA. Additionally, I allege that they have actively concealed whistleblower complaints from the new audit committee by falsely ensuring that these matters have been audited and deemed without merit. It is the responsibility of your corporate governance body to thoroughly investigate these 6/21/24, a 39 PC ase 2:23-cv-02186-SHL-cgc. Deciment 105-thorwfrides 06/21/24, a model of 21/24, a second provide transparent and satisfication were second of the questions and concerns I have raised. The role of the Board of Directors is not just ceremonial, they have a fiduciary duty to act in the best interests of the company, its shareholders, and the public. According to the Sarbanes-Oxley Act (15 U.S C. § 7241 et seq.), the Board must ensure the accuracy of the company's financial reporting and disclosures, and this includes investigating any allegations of misconduct or fraud.

I do not have additional evidence to submit at this time, as I have stated many times, this evidence was sent to the appropriate regulatory agencies. Therefore, it is incumbent upon the Board of Directors to use their authority and resources to conduct a thorough investigation into these concerns. Statements from MAA employees alone are insufficient to address these serious issues.

This matter is of significant public interest and directly impacts the protection of investors and residents. The Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) mandates that companies maintain fair and efficient markets, which includes ensuring transparency and addressing any fraudulent activities. MAA's actions have potentially violated these principles, and it is essential that the Board takes immediate and appropriate action.

#### Legal Basis and Citations

Whistleblower Protections The Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 78u-6) provides robust protections for whistleblowers who report violations of securities laws. This includes prohibiting retaliation against employees who report fraudulent activities. MAA's alleged concealment of whistleblower complaints undermines these protections and violates the spirit of the law.

Corporate Governance Obligations: The Sarbanes-Oxley Act (15 U.S.C. § 7241 et seq.) requires companies to establish and maintain effective procedures for handling whistleblower complaints. Section 301 of the Sarbanes-Oxley Act mandates that audit committees establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters, including procedures for the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters. Failure to adhere to these requirements can result in significant legal and financial consequences.

Obligations under the Securities Exchange Act of 1934. This act (15 U.S.C § 78a et seq.) emphasizes the need for transparency and fair dealing in the securities markets. Concealing whistleblower complaints and fraudulent activities directly contravenes the principles of fair and transparent market practices mandated by the act.

Duty of Candor and Transparency: Corporate officers and directors have a fiduciary duty to act in the best interests of the shareholders and the company. This includes a duty of candor and transparency. Concealing material information, such as whistleblower complaints and fraudulent activities, breaches this fiduciary duty and can lead to personal liability for the officers and directors involved.

By failing to address these concerns, the Board risks not only legal scrutiny and potential penalties from regulatory bodies but also the erosion of trust among investors and the public. It is crucial for the integrity and future of the company that these issues are

addressed transparently and responsibly. I urge the Board of Directors to fulfill their duties 6/21/24, 8 39 PMC ase 2:23-cv-02186-SHL-cgc. Document 105-16-16-06/21/24, Page 33 of 45 and provide a detailed report on their heading areas ctions taken in response to these

allegations.

Robert Delpriore is not involved.

Thank you,

# From

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Mid-America Apartment Communities, Inc. Representative Mon, 06/17/2024 - 16.48

Thank you again for your submission and numerous follow-ups. While your submissions contain a vast amount of hyperbole, they continue to lack any specifics or supporting documentation.

You may submit information regarding any matters related to accounting, internal accounting controls, or auditing matters through this portal for investigation. Please provide all documentation in your possession to substantiate your concerns by Friday, June 21, 2021. If no supporting documents have been provided by June 21, 2024, this submission will be closed. However, you can always make a new submission.

We strongly encourage you to obtain and review the current order from the Federal District Court for the Western District of Tennessee so that you can understand it's impact.

# Created

Mon, 06/17/2024 - 14.59

When your company, MAA, Mid-America Apartment Communities Inc., specifically Tamara Fischer, Edith Kelly-Green, James K. Lowder, Thomas H. Lowder, Claude B. Nielsen, William Reid Sanders, Gary S. Shorb, and David P. Stockert, along with MAA executives H. Eric Bolton Jr. (Chairman & amp; Chief Executive Officer), A. Bradley Hill (President, Chief Investment Officer), Timothy P. Argo (Executive VP, Chief Strategy & amp; Analysis Officer), Melanie M. Carpenter (Executive VP, Chief Human Resources Officer), Robert J. DelPriore (Executive VP, Chief Administrative Officer & amp; General Counsel), Amber Fairbanks (Executive VP, Property Management), Joseph P. Fracchia (Executive VP, Chief Technology & amp, Innovation Officer), A. Clay Holder (Executive VP, Chief Financial Officer), David C. Ward (Executive VP, Investments), Leslie B.C. Wolfgang (Senior VP, Chief Ethics & amp; Compliance Officer & amp; Corporate Secretary), Indrid Agaj (Senior VP, Director of New Construction), Scott Andress, Eugenia McGown, Jay Blackman (Regional Vice President),

The blatant disregard for ethical conduct within MAA is deeply troubling. A conflict of interest isn't a mere technicality; it's a fundamental breach of trust. When your company, MAA, Mid-America Apartment Communities Inc., denies ownership of a property, specifically Tamara Fischer, Edith Kelly-Green, James K. Lowder, Thomas H. Lowder, Claude B. Nielsen, William Reid Sanders, Gary S. Shorb, and David P. Stockert, along with MAA executives H. Eric Bolton Jr. (Chairman & amp; Chief Executive Officer), A. Bradley Hill (President, Chief Investment Officer), Timothy P. Argo (Executive VP, Chief Strategy & amp; Analysis Officer), Melanie M. Carpenter (Executive VP, Chief Human Resources Officer), Robert J. DelPriore (Executive VP, Chief Administrative Officer & amp; General Counsel),

Amber Fairbanks (Executive VP, Property Management), Joseph P. Fracchia (Executive VP, 6/21/24, a 39 MC as a 2:23 cv-02186-SHL-cgc Document Robinst Ro

Ethical behavior isn't just a buzzword; it's the foundation of any reputable organization. It means doing what's right, even when it's difficult or costly. Honesty, integrity, fairness, and respect for others are not optional; they're essential.

MAA's actions, as revealed in the court filings, demonstrate a blatant disregard for these principles. By attempting to shirk responsibility for potential wrongdoing, MAA is not only harming those directly affected by its actions but also eroding public trust in the company. This kind of behavior is not only unethical; it's unsustainable in the long run.

To put it bluntly, MAA's actions are unacceptable. They show a lack of respect for residents, investors, and the broader community. This isn't just about legalities; it's about basic decency and doing what's right...

Ethical behavior isn't just a buzzword; it's the foundation of any reputable organization. It means doing what's right, even when it's difficult or costly. Honesty, integrity, fairness, and respect for others are not optional, they're essential.

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To put it bluntly, MAA's actions are unacceptable. They show a lack of respect for residents, investors, and the broader community. This isn't just about legalities; it's about basic decency and doing what's right.

If MAA wants to regain the public's trust, it needs to make a drastic change. This starts with acknowledging ownership responsibilities, addressing safety concerns head-on, and ensuring that financial disclosures are transparent and accurate. It means putting people before profits and prioritizing ethical behavior in all aspects of the business.

Have a blessed day!

1 (?language=en&page=0)

2 (?language=en&page=1)

Next > (?language=en&page=1)

Last » (?language=en&page=1)

Message

Documents

😞 Add Comment



# Message Summary

Subject Retaliation Judement

Type Secure Web Form

Documents None

Created Fri, 06/14/2024 - 09.37

# **Original Message**

Tamara Fischer, Edith Kelly-Green, James K. Lowder, Thomas H. Lowder, Claude B. Nielsen, William Reid Sanders, Gary S. Shorb, and David P. Stockert, along with MAA executives H. Eric Bolton Jr. (Chairman & amp; Chief Executive Officer), A. Bradley Hill (President, Chief Investment Officer), Timothy P. Argo (Executive VP, Chief Strategy & amp; Analysis Officer), Melanie M. Carpenter (Executive VP, Chief Human Resources Officer), Robert J. DelPriore (Executive VP, Chief Administrative Officer & amp; General Counsel), Amber Fairbanks (Executive VP, Property Management), Joseph P. Fracchia (Executive VP, Chief Technology & amp; Innovation Officer), A. Clay Holder (Executive VP, Chief Financial Officer), David C. Ward (Executive VP, Investments), Leslie B.C. Wolfgang (Senior VP, Chief Ethics & amp; Compliance Officer & amp; Corporate Secretary), Indrid Agaj (Senior VP, Director of New Construction), Scott Andress, Eugenia McGown, Jay Blackman (Regional Vice President), as well as MAA outside counsel Paige Mills, John Gowen, Michael Kappallas, and the firm Bass Berry & amp; Sims PLC, are attempting to wrongfully retaliate against me in court by pursuing a judgment exceeding \$330,000.

I am prepared to have my trust cover the amount sought, contingent upon the expedited processing of the billing. Since 1995, Eric, Leslie, AI, and others have been involved in creating numerous shell companies to facilitate a range of flicit activities. This long-term scheme includes antitrust violations, securities fraud, and extensive business fraud, all of which I have extensively documented and reported to the government. Additionally, I have submitted detailed evidence of unethical and fraudulent actions by the Western Tennessee Federal District Court, resulting in over 100 communications sent to Washington, D.C. The depth and persistence of these activities might evoke comparisons to the legal thriller "The Firm," where

#### systemic corruption within powerful institutions is dramatically unveiled. Moreover, the case encompasses severe science 6/21/24,

Sond financial misconduct, including serious violations related to the civil rights of residents and employees, as well as breaches of disability rights within the operations of employee relations and human resources. departments. These transgressions underscore a pattern of systemic and exploitative practices adopted by the organization, highlighting both the scale and the impact of the wrongdoing involved.

This case not only reflects the specific misdeeds within our organization but also has broader implications across the industry, similar to the revelations in the AMD case. In that situation, a courageous insider worked in conjunction with the Department of Justice to reveal widespread price-fixing activities among major tech companies. This breach of trust not only violated the Sherman Antitrust Act by illegally manipulating market prices but also highlighted a pervasive culture of collusion aimed at stifling competition and innovation.

The whistleblower's actions in the AMD scenario, much like in our own case, were pivotal in initiating government investigations that eventually led to significant legal actions against the perpetrators. This collaboration with law enforcement is instrumental in upholding the principles of fair competition as mandated by law. Specifically, price-fixing activities breach Section 1 of the Sherman Act, which outlaws all agreements among competitors to fix product. prices, limit production, or rig bids, practices that were evidently followed by those involved in our related schemes.

The role of whistleblowers in such contexts cannot be overstated-they serve as the eyes and ears on the ground, often at great personal risk. Their willingness to come forward not only helps enforce the law but also serves to maintain corporate and public integrity by exposing actions that may otherwise remain hidden from public scrutiny. These individuals are protected under various statutes such as the Dodd-Frank Act and the Sarbanes-Oxley Act, which provide mechanisms for their protection and ensure they are not retaliated against for their disclosures.

Such cases underscore the necessity for rigorous enforcement of antitrust and securities laws and demonstrate the crucial role of internal actors in coming forward to disclose wrongdoing. As more of these instances are brought to light, they serve as a deterrent to similar practices. elsewhere in the industry, promoting a more ethical and competitive business environment. Throughout the five years I worked there, price-fixing activities were not just occasional lapses; they were a systematic part of the business strategy, making any claims to the contrary patently false. Our organization, in collaboration with RealPage, used its software platforms to orchestrate and maintain rental price agreements among competitors. This practice directly constitutes price-fixing under the Sherman Antitrust Act (15 U.S.C. § 1), which has been consistently held illegal in landmark cases such as United States v. Trenton Potteries Co., 273 U.S. 392 (1927), and United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940). These cases underscore the illegality of any agreement among competitors to fix prices, establish market shares, or control market conditions.

Moreover, the misuse of RealPage software to manipulate market prices challenges our organization's status as a legitimate real estate investment trust (REIT). By engaging in such practices, the organization is potentially violating the ethical and financial transparency. requirements expected of REITs, particularly those related to honest market participation and fair financial reporting. There's an underlying scheme to hide profits and manipulate financial statements, which is a severe breach of both federal securities laws and REIT regulations. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, whistleblowers like

myself who report securities fraud are afforded protection from retaliation (15 U.S.C. § 78u-6/21/24, a.3 p.C.ase 2:23-cv-02186-SHL-cgc. Document 105 is block Filed, 06/21/24, Page 38 of 45 b(h)). This is critical, as it ensures that in page 38 of 45 Additionally, the Clayton Act (15 U.S.C. § 15) empowers individuals harmed by antitrust violations to seek treble damages, thereby providing a substantial remedy for the financial and market distortions caused by such illegal activities.

I am bringing these issues to light through the whistleblower line not just to contest the retaliation I have faced but also to press for a thorough investigation and accountability. Ensuring compliance with antitrust and securities legislation is essential for maintaining the integrity of our financial markets and the trust of investors, employees, and the public. I am wondering whether there will be further FBI investigations akin to the one that occurred at Cortland Property Management in Atlanta. Such actions are essential to uncover and address illegal practices within the industry. It's crucial to remember that any attempt to destroy evidence in anticipation of or during such investigations constitutes obstruction of justice, a serious federal offense that could lead to additional legal consequences beyond the initial charges related to antitrust or fraud violations.

# Comments

Displaying 26 - 34 of 34

#### Created

Mon, 06/17/2024 - 14:37

In addition to the previously raised issues, I will address your denials of violating resident and employee civil rights.

The court order, purportedly obtained by MAA to prevent me from disseminating information about alleged civil rights violations, raises significant legal and ethical concerns. Its origins and the means through which it was secured suggest potential collusion and could potentially violate my First Amendment rights to freedom of speech.

Furthermore, the implications of this order for potentially barring critical information dissemination raise questions about its compatibility with the mandates of regulatory bodies like the EEOC and HUD. If presented to these agencies, the manner of its presentation and its potential to infringe upon established rights to free speech and fair process could raise concerns about its intent and legitimacy. One might question whether these agencies, tasked with enforcing anti-discrimination laws, would accept the validity of this order without scrutiny, given its potential impact on their ability to investigate and rectify civil rights violations.

This situation is further compounded by MAA's alleged systemic violations of employee civil rights. These allegations raise concerns under various statutes, including Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, and national origin, and the Fair Labor Standards Act, which establishes minimum wage, overtime pay, and record-keeping standards.

Given these legal frameworks, the restrictions placed by the court order on discussing 6/21/24, a 38 PMCase 2:23-cv-02186-SHL-coc Document 1906-18-biowErled 06/21/24, a 38 PMCase 2:23-cv-02186-SHL-coc Document 1907-18-biowErled 06/21/24, a 38 PMCase 2:25-cv-02186-SHL-coc Document 1907-18-biowErled 06/21-24, a 38 PMCase 2:25-cv-02186-SHL-coc Document 1907-18-biowErled 06/21-24, a 38 PMCase 2:25-cv-02186-SHL-coc Document 1907-18-biowErled 06/21-24, a 38 PMCase 2:25-cv-0218-SHL-coc Document 1907-18-biowErled 06/21-24, a 38 PMCase 2:25-cv-02186-SHL-coc

#### Created

Mon, 06/17/2024 - 14:00

Speaking about the FTC, In addition to the antitrust issues previously discussed, the data breach at MAA represents another significant legal challenge, potentially contravening both Tennessee state laws and federal regulations enforced by the Federal Trade Commission (FTC). Under the Tennessee Identity Theft Deterrence Act, MAA is obligated to notify any affected Tennessee residents "immediately" following the discovery of a breach, but no later than 45 days from such discovery. This prompt notification is essential to mitigate the risk of harm to those affected by allowing them to take protective measures against potential identity theft and other fraudulent activities.

Moreover, the failure of MAA to notify affected individuals within the mandated timeframe raises substantial legal concerns, suggesting a disregard for the statutory obligations designed to protect consumer privacy and security. Such behavior has been the focus of enforcement actions by the Tennessee Attorney General's office in the past, as demonstrated in multistate actions against entities like Target for similar notification failures

On the federal level, the FTC mandates rigorous compliance with data security standards and timely breach notifications as part of its enforcement of privacy laws. The FTC's guidelines and actions, such as those seen in FTC v. Wyndham Worldwide Corp. and the settlement with Uber Technologies, underscore the potential consequences of failing to adhere to these practices. These include not only substantial fines but also reputational damage and the imposition of long-term compliance monitoring.

Given the precedence set by these actions and the seriousness with which both Tennessee law and the FTC treat data breaches and delayed notifications, the breach and the delayed response by MAA could potentially lead to significant legal repercussions, including state and federal investigations, fines, and other penalties as deemed appropriate by authorities.

It is imperative that MAA addresses this breach with the urgency it demands, ensuring compliance not only with Tennessee's legal requirements but also with federal regulations. Immediate steps must be taken to rectify this situation, including a thorough review of current data security measures and notification processes. Such steps are critical not only for legal compliance but also for maintaining consumer trust and the integrity of MAA's operations in the face of these serious legal challenges.

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MAA's engagement with RealPage software to coordinate pricing and rental increases constitutes a serious breach of antitrust laws, specifically violating the Sherman Antitrust Act, 15 U.S.C. §§ 1-2, which proscribes activities such as price fixing, market allocation, and bid rigging. This act declares per se illegal any agreements among competitors that disrupt market forces by fixing prices or allocating markets. The utilization of RealPage by MAA, which facilitates the sharing of competitively sensitive information, clearly supports an allegation of illegal coordination among real estate competitors, akin to price manipulation schemes.

In the seminal case of Arizona v. Maricopa County Medical Society, 457 U.S. 332 (1982), the Supreme Court ruled that agreements among competitors setting maximum fees were inherently illegal under the Sherman Act. This underscores the illegality of any consensus among competitors that distorts pricing mechanisms governed by free market dynamics, aligning closely with the actions purportedly undertaken by MAA.

Additionally, in American Airlines, Inc. v. Sabre, Inc. (N.D. Tex. 2012), the court delved into anticompetitive practices enabled by software within the airline industry, illustrating how such technologies could skew market competition — a scenario paralleled in the real estate sector through MAA's use of RealPage. This case further illustrates the potential for digital platforms to facilitate anticompetitive behavior that is actionable under current laws.

Moreover, both the Federal Trade Commission (FTC) and the Department of Justice (DOJ) are intensifying their scrutiny of anticompetitive practices across digital platforms. Investigations and subsequent legal actions against major technology firms for similar competitive malpractices set a precedent that could potentially apply to MAA's conduct.

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Mon, 06/17/2024 - 13<sup>-</sup>05

In addition, the current composition of your corporate leadership raises significant governance concerns, not only because individuals associated with creating misleading and fictitious subsidiaries occupy key executive roles, such as CEO, SVP of Ethics, and a former CFO consulting during the CEO transition, but also due to the problematic concentration of power where the CEO also serves as the Chairman of your Board of Directors. This structure is further complicated by the fact that a vast majority of the board members have outside interests tied to the performance of MAA, presenting potential conflicts of interest that could impede their fiduciary duties to act impartially and prioritize the company's and its shareholders' best interests. The New York Stock Exchange (NYSE) corporate governance rules under Section 303A.02 advocate for a majority of independent

directors on the board to enhance oversight and reduce conflicts of interest. The Salph Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in between red 06/21/24, a sept Case 2:23-cv-02186 SHL-coc Document in the set of the set of the total financial reporting and decision-making, which could be compromised under these conditions. The dual role of CEO and board chairman has been widely criticized in governance circles and by the SEC for potentially leading to a lack of necessary oversight and checks and balances, as evidenced in cases like In re Walt Disney Co. Derivative Litigation, where the court scrutinized the effectiveness of governance structures in protecting shareholder interests. The extensive external interests of the board members not only jeopardize the integrity and transparency expected of a publicly-traded company but may also expose the company to heightened legal and regulatory challenges if not addressed in compliance with rigorous governance standards and ethical norms.

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Mon, 06/17/2024 - 13:00

In line with the commitments made by Mr. Glenn Russell in 2021, I am awaiting the detailed reports investigating the concerns I have raised. It is crucial that these reports thoroughly outline the scope and methodologies employed to ensure they sufficiently address the issues to my satisfaction, facilitating a potential resolution

The acquisition of American First REIT by MAA in 1995 marked a significant transformation that demands rigorous scrutiny to confirm compliance with the regulatory frameworks stipulated by the Securities Act of 1933 and the Securities Exchange Act of 1934. These statutes mandate meticulous registration and robust disclosure during such transactions to uphold market integrity and safeguard shareholder interests. The pivotal importance of transparent disclosure was notably affirmed in the case of SEC v. Texas Gulf Sulphur Co., where the court highlighted the detrimental effects on shareholders and public trust resulting from the omission of critical information.

Additionally, this transaction's compliance with Rule 10b-5, under the Securities Exchange Act of 1934, which governs fraud and deception in securities transactions, is paramount. This rule, as delineated in landmark cases like SEC v Texas Gulf Sulphur Co., mandates that companies furnish accurate and comprehensive information to prevent misleading investors and other stakeholders. Any misrepresentation or inadequate disclosure concerning the financial operations or status of American First REIT could be construed as a violation of this rule.

The post-acquisition complexities also underscore the necessity of adhering to the Sarbanes-Oxley Act of 2002, particularly Sections 302 and 404. These sections impose a duty on corporate management to certify the accuracy of financial reports and maintain rigorous internal controls over financial reporting. Any discrepancies or failures in these areas could subject MAA to allegations similar to those in United States v. Ebbers, where corporate executives faced legal repercussions for fraudulent accounting practices and deceptive shareholder communications.

As a REIT, American First REIT was obligated to meet the IRS regulations specified under IRC Section 856, which include maintaining transparent asset management and appropriately distributing dividends. MAA's ongoing practices of generating fictitious

invoices, inflating insurance reimbursements, creating shell subsidiaries, and evading the 6/21/24, a 38-Ph/Case 2:23-cv-02186-SHL-coc Document 106-16-16-16-06/21/24, Page 42 of 45 Tiscal responsibilities incumbent upon Page 10 89419 threaten its status but also reflect a systematic evasion of the rigorous transparency and distribution mandates imposed by the IRS. Such actions could trigger severe penalties under IRC Section 857, which outlines tax-related penalties for REITs that fail to meet these stringent requirements.

#### Created

Mon, 06/17/2024 - 12:35

Thank you for your message dated June 17, 2024. I am writing to address several inaccuracies and falsehoods contained in your communication. I also wish to outline the relevant legal frameworks that protect my rights and the obligations of MAA under the law.

Firstly, I must clarify that there is no court order currently in place prohibiting my actions. Any assertion to the contrary is patently false and misleading. Your claim that my continued emailing of your associates is in violation of a court order is unfounded and lacks any legal basis. Under Rule 11 of the Federal Rules of Civil Procedure, any filing or written assertion must be based on factual contentions and warranted by existing law. Your baseless accusations potentially violate this rule.

Secondly, I categorically deny having sent any emails to your employees that I can recall. Therefore, your accusation that I have engaged in such conduct is not only baseless but also defamatory. Defamation, under both common law and statutory law (see, for example, 28 U.S.C. § 4101), includes the making of false statements with the intent to harm the reputation of another. Your unfounded claims clearly meet this definition.

Your repeated allegations against me are entirely without ment. You have no substantial evidence to support these claims, and your attempts to intimidate and harass me through false statements will not succeed. You claim to have a judgment against me, however, I have not been made aware of any such judgment, and I challenge you to provide venifiable proof of its existence. Under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, I am entitled to notice and an opportunity to be heard before being deprived of life, liberty, or property

Furthermore, I must address the court orders you referenced. These orders were illegally and unethically entered, and I assure you this is being investigated by multiple agencies. The lawsuit against me was dropped when I was 100% prepared to go to trial. Not providing me with a fair trial is a violation of my rights under the Seventh Amendment to the United States Constitution, which guarantees the right to a jury trial in civil cases. Additionally, the manner in which these orders were obtained may constitute a violation of 42 U S C. § 1983, which provides a remedy for the deprivation of constitutional rights under color of state law.

Regarding the serious allegations I have made against MAA, it is imperative to note that I have submitted substantial documentation to various government agencies, including evidence that supports my claims of MAA's misconduct. These allegations include but are not limited to:

### MAA operating a series of shell companies 6/21/24, 8 38 prCase 2:23 CV-02186-SHI-COC Document (106 to blow Filed: 06/23/24): Page 43 of 45 MAA committing antitrust violations PageID 1875 MAA engaging in securities fraud and business fraud MAA violating the civil rights of residents and employees MAA's HR department violating the civil rights of disabled employees Your summary of my allegations is accurate; however, your assertion that these claims are without merit is not. The documents I have submitted to government agencies provide compelling evidence of MAA's illegal activities. I assure you, these matters are being taken seriously by the authorities, and the outcome will not be favorable for MAA when these violations are confirmed. The Sherman Antitrust Act (15 U.S C. §§ 1-7), the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), and the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) are just a few examples of the federal statutes that govern the conduct I have alleged

Given the gravity of these accusations, I expect MAA to conduct a thorough and unbiased investigation into these matters. Should you require specific documentation or further details regarding these allegations, I am willing to cooperate, provided that the request is made in good faith and with a genuine intent to rectify any misconduct.

Your attempt to close this matter without addressing the substantial evidence I have presented is unacceptable. I urge you to reconsider your position and take the necessary steps to address these serious concerns.

#### From

Mid-America Apartment Communities, Inc. Representative

Created Mon, 06/17/2024 - 11:22

Thank you for your submission

As you know, the lawsuit was the direct result of your intentional acts to illegally infringe on our trademark rights regardless of how you attempted to hide your identity behind a series of firewalls. Any judgment against you is a result of only your intentional actions to infringe upon our trademark and harass MAA and nothing else. Your continued emailing of our associates is in direct violation of a Court order and we now will have to expend additional funds to pursue sanctions against you. That said, you are entitled to submit whistleblower complaints under the court order and we take any submission to our whistleblower line very seriously.

As to the allegations in your submission about MAA, we summarize them as follows:

- 1. MAA is operating a series of shell companies
- 2. MAA is committing antitrust violations
- 3. MAA is committing securities fraud and business fraud
- 4. MAA is violating the civil rights of residents and employees
- 5. MAA's HR department is violating the civil rights of disabled MAA employees

These allegations are very similar to those you have raised in the past, each of which we have found to be without merit. Please provide us with any information in your possession indicating that MAA has engaged in any of the conduct that you describe. Additionally, if

we have not accurately summarized the content of your concerns, please let us know. If 6/21/24, a 38 PMC ase 2:23-cv-02186-SHL-cgc Document, in the individual of the provide any response or addingent in the provide any response or addingent is to consider, we will consider this submission closed on June 21, 2024.

Thank you.

#### Created

Fri, 06/14/2024 - 11:57

#### Email to Court, Judges and Circuit Executive

#### **Documents**

6-14 - Email to Courts pdf (https://www.whistleblowerservices.com/maa/system/files-	
encrypted/whistleblower/documents/2024-06-14/6-14%20-%20Email%20to%20Courts_0.pdf?	1.24 MB
language≃en)	

#### Created

Fri, 06/14/2024 - 11:56

#### Documents

#### Documents

6-14 - Order pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documenta/2024-06-14/6-14%20-%20Order_0.pdf?language=en)	139 KB
6-14 - Email to Judges & Circuit Execuitive.pdf	
(https://www.whistleblowerservices.com/maa/system/files-	1.00.440
encrypted/whistleblower/documents/2024-06-14/6-14%20-	1.08 MB
%20Email%20to%20Judges%20%26%20Circuit%20Execultive_0.pdf?language=en)	

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# Add Comment

Message

▲ Documents

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#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

#### Plaintiff,

MID-AMERICA APARTMENT COMMUNITIES, INC (MAAI & MAA-PI)., MID-AMERICA APARTMENT COMNUNITIES, LLC., MID-AMERICA APARTMENTS L.P (MAA)

<u>Alabama</u> CPSI, LLC CPSI-UCO Spanish Oaks, LLC CPSI-UCO, LLC Highway 31 Alabaster Two, LLC Highway 31 Alabaster, LLC Delaware 10th Apartments, LLC 1499 Massachusetts Avenue, Inc. 1499 Massachusetts Holding, LLC CC Daybreak, LLC CC Val Vista, LLC CC West Midtown, LLC Colonial Commercial Contracting, LLC Colonial Construction Services, LLC Heathrow 4, LLC MAA Alloy, LLC MAA Arkansas REIT, LLC MAA Holdings, LLC MAA WWARRS, LLC Post Carlyle II, LLC Sand Lake 2019, LLC Stone Ranch at Westover Hills, LLC

Florida MAA Westshore Exchange LLC

#### Georgia

3630 South Tower Residential, LLC 98 San Jac Holdings, LLC PAH Lender, LLC Park Land Development, LLC PBP Apartments, LLC PF Apartments, LLC PL Conservation, LLC Post 1499 Massachusetts, LLC Post Alexander II, LLC Post Asset Management, Inc. Post Carlyle I, LLC Post Centennial Park, LLC Post Corners, LLC Post Galleria, LLC Post Hyde Park, LLC Post Midtown Atlanta, LLC Post Midtown Square GP, LLC Post Midtown Square, L.P. Post Park, LLC Post Park Development, LLC Post Parkside at Wade II GP, LLC Post Parkside at Wade II, L.P. Post Services, LLC Post South End GP, LLC Post South End, L.P. Post Wade Tract M-2, L.P. Rise Condominium Development, LLC

# Tennessee

Brighter View Insurance Company, LLC Mid-America Apartments, L.P.

# Texas

Akard-McKinney Investment Company, LLC MAA of Copper Ridge, Inc.

Case 2:23-cv-02186-SHL-cgc	Document 106 PageID 1879	Filed 06/24/24	Page 2 of 121
	) ) )		
V.	)	No. 2:23-cv-2186-SHL-cc	
DENNIS MICHAEL PHILIPSON, Defendant.	) )		

Motion for Entry of Judgment to Terminate Proceedings Due to Perceived Procedural Misconduct, Judicial Bias, and Whistleblower Retaliation by Mid-America Apartment Communities, Inc., Employees and Affiliates

#### Table of Contents

- 1. Introduction
  - 1.1 Background of the Case
  - 1.2 Summary of Key Issues and Purpose of the Motion

#### 2. Legal Standards

- 2.1 Federal Rules of Civil Procedure: Motion for Summary Judgment and Immediate Relief
- 2.2 Relevant Tennessee Rules of Professional Conduct
- 2.3 Applicable Securities Exchange Rules and Regulations
- 2.4 Judicial Misconduct and Bias Standards

3. Whistleblower Retaliation and Harassment

- 3.1 Overview of Whistleblower Laws
- 3.2 Specific Incidents of Retaliation by MAA
- 3.3 Harassment by MAA Employees, Management, Attorneys and Contractors
- 3.4 Summary of Whistleblower Complaints (2021 and 2024)
- 3.5 Legal Precedents Supporting Whistleblower Claims
- 4. Court's Biased Treatment and Abuse of Power
  - 4.1 Overview of Due Process Violations
  - 4.2 Instances of Judicial Misconduct
  - 4.3 Conflict of Interest Involving Judicial Law Clerk

#### Document 106 PageID 1880

- 4.4 Relevant Case Law on Judicial Bias
- 5. Violation of Civil Rights
  - 5.1 Overview of Civil Rights in the Legal Process
  - 5.2 Specific Civil Rights Violations by the Court
  - 5.3 Impact on Defendant's Ability to Defend Himself
- 7. Unauthorized Subpoenaing and Alteration of Records
  - 7.1 Federal Rule of Civil Procedure 45 Violations
  - 7.2 Alteration and Misuse of Personal Email Addresses and Financial Records
  - 7.3 Legal Precedents on Unauthorized Subpoenaing
  - 7.4 Illegal actions by a process server in Virginia

# 8. Defamation and Public Impact

- 8.1 Overview of Defamation Law
- 8.2 Defamatory Actions by MAA
- 8.3 Public Impact and Harm to Defendant's Reputation
- 8.4 Legal Precedents on Defamation

# 9. Conflict of Interest in Detail

- 9.1 Legal Standards for Conflict of Interest
- 9.2 Specific Conflict Involving Judicial Law Clerk and Opposing Counsel
- 9.3 Conflicts of Interest at MAA
- 9.4 Impact on the Fairness of the Proceedings
- 11. Unlawful and Unjust Orders
  - 11.1 Orders Prohibiting Dissemination of Information
  - 11.2 Orders Restricting Access to MAA Properties
  - 11.3 Impact of Unlawful and Unjust Orders on Defendant
- 13. Conclusion
  - 13.1 Summary of Key Arguments
  - 13.2 Request for Immediate Judgement
  - 13.3 Necessity for Immediate Legal Redress

Case 2:23-cv-02186-SHL-cgc

Document 106 Filed 06/2 PageID 1881

Filed 06/24/24 Page 4 of 121

14. Defending Fundamental Rights and Advocating for Whistleblower Justice

- 14.1 Medical Suffering and Impact on Mental Health
- 14.2 Persistent Judicial Bias and Ethical Conflicts
- 14.3 Overview of Court Proceedings and Legal Challenges
- 14.4 Confronting MAA's Discriminatory Practices Against Mental Illness and Disability

16. Responses to various of the Plaintiff's Motions and Court Orders

- Document 6 Response to 'PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY'
- Document 7 Response to 'MEMORANDUM OF FACT AND LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY'
- Document 8 Response to 'ORDER GRANTING PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY'
- Document 10 Summary of My Motion to Quash Subpoena
- Document 11 & 12 Response 'NOTICE OF APPEARANCE OF JOHN S. GOLWEN AND JORDAN E. THOMAS'
- Document 13 Response to 'Plaintiff's RESPONSE TO DENNIS PHILIPSON'S MOTION TO QUASH'
- Document 14 Response to 'DECLARATION OF LESLIE WOLFGANG'
- Document 15 Against 'ORDER DENYING DENNIS PHILIPSON'S MOTION TO QUASH SUBPOENA'
- Document 16 'FIRST AMENDED COMPLAINT'
- Document 19 'MOTION AND MEMORANDUM FOR CONTEMPT AND SANCTIONS FOR FAILURE TO RESPOND TO SUBPOENA'
- Document 21 "ORDER DIRECTING DEFENDANT DENNIS MICHAEL PHILIPSON TO SHOW CAUSE"

#### 1. Introduction

#### 1.1 Background of the Case

This case is set against the backdrop of Mid-America Apartment Communities, Inc. (MAA), a real estate

investment trust implicated in various unethical and potentially illegal acts. As a former MAA employee, I,

Dennis Michael Philipson, transitioned from observer to whistleblower after documenting and reporting

multiple infractions within the company, including fraudulent financial practices, misreporting, and significant

lapses in internal controls. My formal complaints, submitted to various regulatory bodies, including the Securities and Exchange Commission (SEC), delineate these allegations, invoking whistleblower protections under statutes like the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Considering the compelling evidence and the apparent violations of my rights, I respectfully urge the court to issue a judgment promptly. There is no need for a response from the attorney; please proceed with the judgment, issue any applicable court fees, and allow me to move forward. The deliberate threats of arresting me, holding me in contempt, fining me, and the ongoing delaying tactics are not only wasting my time but also artificially inflating the purported amount that I supposedly owe MAA in attorney's fees and unsubstantiated and fictitious damages. This protracted legal battle has caused significant personal distress and unnecessary complications.

In what seems to be a retaliatory maneuver, MAA has initiated legal actions against me, asserting trademark infringement claims and issuing defamatory statements that impugn my reputation and professional conduct. This legal conflict intensified on April 3rd, during the discovery phase of the trademark litigation, when MAA, through their attorney Paige Mills of Bass Berry & Sims PLC, issued a subpoena naming me as a witness. This subpoena was subsequently amended to include my email addresses, predicated on speculative assumptions rather than substantive evidence. This amendment may contradict the stipulations of Federal Rule of Civil Procedure 45(d)(3)(A)(ii), which mandates that subpoenas should not impose undue burden or expense on the witness.

Additionally, the proceedings have been characterized by ongoing harassment and retaliatory actions by MAA, which include the unauthorized subpoenaing of my email, Verizon, ISP, and financial records, which they allege belong to me. These actions raise questions regarding the premature and unsubstantiated claims of my involvement in the alleged trademark violations. This situation is further complicated by apparent judicial misconduct and bias. Notably, a concerning relationship has emerged between the judicial law clerk and

attorneys at Bass Berry & Sims PLC, casting a shadow over the impartiality of the proceedings. This relationship potentially violates the ethical standards outlined in cases such as *Liteky v. United States*, which clarifies the grounds for judicial recusal when personal biases or prejudices manifest.

These complex interrelations of law, ethics, and corporate governance paint a troubling picture of the challenges faced by whistleblowers in combating corporate malfeasance and underscore the imperative for rigorous judicial oversight by the Federal Rules of Civil Procedure and relevant case law, such as *Caperton v. A.T. Massey Coal Co.*, which discusses the due process implications of judicial bias.

#### 1.2 Summary of Key Issues and Purpose of the Motion

This motion highlights multiple critical legal and procedural issues evidencing misconduct and bias in this case:

- Expose Judicial Misconduct and Bias: Judicial misconduct has emerged due to improper associations between the judicial law clerk and Bass Berry & Sims PLC attorneys. Other conflicts of interest have not been disclosed except to the appropriate regulatory bodies. Such conduct violates the ethical guidelines outlined in the Model Code of Judicial Conduct. It could necessitate recusal under 28 U.S.C. § 455, which requires judges to disqualify themselves in situations where their impartiality could reasonably be questioned.
- 2. Demand an Immediate Judgment: Call for an immediate judgment against oneself due to the court's demonstrated inability to provide a fair trial, evidenced by the strategic prolongation of proceedings and the inappropriate striking of trial and pre-trial conference dates. This seeks to prevent further procedural abuses and is supported by potential sanctions against opposing counsel under 28 U.S.C. § 1927 for vexatiously prolonging litigation.
- 3. **Prepare for Appeal**: Compile a comprehensive record of all misconduct, bias, and whistleblower retaliation, fortified with references to the Federal Rules of Civil Procedure and critical case law such as

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 7 of 121 PageID 1884 Liteky v. United States. This record will support an appeal illustrating a clear departure from the judicial impartiality required by law.

- 4. **Protect Whistleblower Rights**: I assert the need to protect whistleblowers from retaliation under the Sarbanes-Oxley Act and the Dodd-Frank Act, emphasizing that the campaign of harassment against me violates these protections despite my no longer being employed by the company.
- 5. **Rectify Civil Rights Violations**: Address and rectify civil rights violations, focusing on denying due process and equal access under the Americans with Disabilities Act (ADA). This includes challenging the misuse of my declared mental health condition and ensuring that these rights are respected to facilitate an equitable legal defense.
- 6. **Challenge Defamation and Restore Reputation**: Address and document MAA's defamatory actions, which may constitute defamation per se. These actions have caused significant harm to my reputation, are presumed damaging by law, and are actionable without the need to prove specific economic loss.
- 7. **Correct Improper Notices and Tackle Deliberate Confusion**: Detail tactics employed by MAA and the court that fall short of the procedural requirements set by Federal Rule of Civil Procedure 5. These practices, designed to confuse and inhibit my ability to respond effectively, infringe upon my procedural rights.
- 8. Ensure Fair Trial Procedures: Seek a new trial in a higher court that respects constitutional protections, such as the right to a jury trial under the Seventh Amendment and fair trial procedures under the Sixth Amendment. This includes adequate preparation time and adherence to standards that ensure a fair and impartial trial.
- 9. **Stop Unauthorized Subpoenaing and Record Alteration**: Address unauthorized subpoenaing and record alteration by MAA's attorneys, highlighting breaches of Federal Rule of Civil Procedure 45. This

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 8 of 121 PageID 1885 rule ensures subpoenas do not impose undue burden or expense, emphasizing the necessity for lawful and justified actions.

10. Demand Repercussions for Ethical Violations: Call for stringent consequences against those who have engaged in unethical conduct throughout this case, including sanctions or other punitive measures against MAA's legal team and any court officials who have demonstrated bias or misconduct.

These ten points thoroughly encapsulate the critical issues and actions necessary to address the legal and ethical violations, ensuring a robust foundation for seeking justice and adherence to legal standards in subsequent reviews or appeals.

#### 2. Legal Standards

#### 2.1 Federal Rules of Civil Procedure: Motion for Summary Judgment and Immediate Relief

Given the ongoing proceedings, I request this court to grant immediate judgment against me to facilitate an appeal to a higher court that can thoroughly scrutinize the numerous concerns raised during this litigation. This request is predicated on various provisions under the Federal Rules of Civil Procedure aimed at ensuring the fair and expeditious resolution of legal disputes:

• Rule 11 (Sanctions): It is evident that the actions taken by Mid-America Apartment Communities, Inc. (MAA) and their legal representatives have prolonged this litigation unnecessarily and seem primarily designed to harass. As a whistleblower acting in the public interest, I assert that under Rule 11, MAA's continuous filings, which press unsubstantiated claims and demand undue discovery of communications made to government bodies, must be scrutinized for potential sanctions to deter further abuse of the judicial process.

#### Document 106 Filed 06/24/24 Page 9 of 121 PageID 1886

- Rule 16 (Pretrial Conferences; Scheduling; Management): I request that this court not further schedule or manage proceedings, as MAA has used these opportunities to delay justice. Instead, a summary judgment issued promptly would prevent MAA from engaging in further dilatory tactics that have thus far characterized this litigation.
- Rule 37 (Failure to Make Disclosures or to Cooperate in Discovery; Sanctions): MAA's attempts to
  unlawfully access information disclosed to governmental agencies and professional boards are clear
  violations of discovery processes, reflecting their strategy to intimidate and retaliate against me for my
  whistleblower activities. I suggest that sanctions under Rule 37 be considered to address these critical
  breaches.
- Rule 56 (Summary Judgment): No genuine dispute of material fact requires a trial. The facts demonstrate a clear pattern of retaliation and misuse of legal processes by MAA, justifying a judgment as a matter of law. This motion seeks an immediate summary judgment to end the ongoing legal and personal harassment and to allow for the pursuit of justice in a higher, impartial court.

Moreover, under Rule 1, the court is reminded of its obligation to secure the "just, speedy, and inexpensive determination" of this action. MAA's continued litigation charade not only undermines the integrity of the judicial process but also imposes undue burdens, compromising my rights under the law.

Thus, I respectfully urge this court to issue a judgment against me without delay, enabling me to appeal to a higher court where the principles of justice and impartiality can be appropriately evaluated and applied. This action is crucial not only to address the procedural imbalances observed but also to uphold the fundamental tenets of our legal system.

#### 2.2 Relevant Tennessee Rules of Professional Conduct

The integrity of legal proceedings relies fundamentally on adherence to the Tennessee Rules of Professional Conduct, which prescribe mandatory ethical guidelines for attorneys. This motion seeks to underscore the

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 10 of 121 PageID 1887

violations by opposing counsel within the context of these rules and to call for the court's immediate intervention. To support this motion, it is pertinent to reflect on specific rules enriched by relevant case law:

- Rule 1.7 (Conflict of Interest: Current Clients): This rule addresses conflicts of interest that can impair an attorney's ability to serve their client impartially. As highlighted in the seminal case Flatt v. Superior Court of California (1994), where the court held that a conflict of interest exists if there's a substantial risk the lawyer's representation of a client would be materially and adversely affected by the lawyer's interests or duties to another current client or a third party. In our case, the entanglements of opposing counsel with court personnel may similarly impair their duty of loyalty to their client, warranting a thorough review and appropriate measures.
- Rule 3.3 (Candor Toward the Tribunal): The essence of Rule 3.3 is ensuring honesty in judicial proceedings. The obligation in In re Snyder, 472 U.S 34 (1985), where an attorney was sanctioned for deliberately misleading the court, underscores the necessity for absolute honesty and transparency with the tribunal. Given the allegations of misleading statements and potentially fabricated evidence by the opposing counsel, similar scrutiny and sanctions may be warranted here.
- Rule 3.5 (Impartiality and Decorum of the Tribunal): This rule prevents attorneys from seeking to
  influence judges or other officers of the court through improper means. The case Matter of Evans
  (2008) provides a clear example of an attorney being disciplined for attempting to sway a judge through
  ex-parte communication. The alleged improper communications by the opposing counsel in our case
  threaten the decorum and impartiality of the tribunal, suggesting a need for strict enforcement of this
  rule.
- Rule 8.4 (Misconduct): Conduct involving dishonesty, fraud, deceit, or misrepresentation is prohibited. The decision in *In re Disciplinary Proceedings Against Eisenberg*, 621 N.W.2d 336 (Wis. 2001), reinforced that attorneys engaging in such conduct face serious repercussions. Given the opposing counsel's

allegations of deceitful practices, reviewing their conduct under Rule 8.4 is imperative to maintaining the legal profession's integrity.

This motion appeals for the enforcement of these ethical guidelines, supported by established case law, to address the alleged violations by the opposing counsel. Drawing parallels with relevant judicial precedents, it seeks to highlight the breaches and remind the court of its duty to uphold the ethical standards essential for the fair administration of justice. Thus, the court is urged to take immediate action to correct these breaches, ensuring the proceedings' integrity and upholding the public trust in the judicial system.

#### 2.3 Applicable Securities Exchange Rules and Regulations, False Claims Act, and Dodd-Frank Act Implications

This motion section highlights Mid-America Apartment Communities, Inc. (MAA) 's alleged unethical and discriminatory practices toward Section 8 housing recipients. It suggests violations under the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act and the False Claims Act (FCA). These practices may contravene federal regulations to safeguard financial markets and federal housing assistance programs.

Securities Exchange Act of 1934 and Dodd-Frank Act Provisions:

- Section 21F of the Securities Exchange Act (Dodd-Frank Act) provides robust whistleblower protections, prohibiting employer retaliation for reporting securities violations to the SEC. These protections are particularly relevant given MAA's rent inflation practices, which could impact financial disclosures and market operations.
- Rule 21F-2 (Whistleblower Status and Retaliation Protection): Defines whistleblower eligibility and anti-retaliation protections, which are relevant to the adverse actions I have faced from MAA for disclosing potentially illegal activities.
- Rule 21F-17 (Protection of Whistleblower Identity): Ensures whistleblowers can freely communicate with the SEC about potential violations without interference. MAA's use of confidentiality agreements to obstruct these communications directly challenges this protection.

- **Discriminatory Rent Practices:** MAA's policies of not accepting housing choice vouchers and inflating rents to exclude Section 8 voucher holders likely misuse federal housing subsidies. These actions may price out low-income individuals from their communities, potentially breaching the FCA by falsely indicating compliance with federal housing subsidy requirements.
- **Direct Evidence of Intent:** A recorded conversation with MAA's Senior Vice President in charge of renovations, stating, "I thought we were trying to price them out," provides direct evidence of an intent to circumvent the objectives of the Section 8 program. This statement is critical as it could be considered fraudulent under the FCA.

This section requests that higher judicial authorities recognize these serious statutory violations and that subsequent legal actions prevent MAA from continuing such discriminatory and retaliatory practices. It is crucial to uphold the protections these federal laws provide to enforce legal and ethical standards and preserve the integrity of public interest regulations concerning financial markets and housing policies.

#### **2.4 Judicial Misconduct and Bias Standards**

In this section, I address the severe issues of judicial misconduct and bias that have significantly compromised the integrity of these proceedings against me, Dennis Michael Philipson, in the case brought by Mid-America Apartment Communities, Inc. (MAA). The statutory and ethical standards, alongside relevant case law, clearly establish the framework necessary to highlight these concerns and ensure a fair and impartial judicial process.

• **28 U.S.C. § 455 (Disqualification of Judges):** This statute mandates that any justice, judge, or magistrate judge must disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. The documented relationship between the judicial law clerk, Michael Kapellas, and the attorneys from Bass Berry & Sims PLC, representing MAA, raises substantial concerns about

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 13 of 121 PageID 1890 impartiality. Mr. Kapellas' continued involvement in issuing orders that adversely affect me directly contradicts the requirement for impartiality, necessitating his recusal under this statute.

- Canon 3 of the Code of Conduct for United States Judges: Canon 3 requires judges to perform their duties impartially and diligently, avoiding any appearance of bias or prejudice. Mr. Kapellas's ongoing interactions with Bass Berry & Sims PLC and his significant role in the judicial process violate this canon and undermine the integrity of the judicial proceedings.
- Liteky v. United States, 510 U.S. 540 (1994): In Liteky, the Supreme Court clarified that judicial bias must stem from an extrajudicial source unless the judge's behavior during the proceedings shows deep-seated favoritism or antagonism, making fair judgment impossible. Mr. Kapellas's actions, influenced by his previous association with the plaintiff's law firm, demonstrate such bias, suggesting a significant departure from impartiality that requires disqualification.
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009): The Caperton decision emphasizes that extreme facts suggesting a probability of actual bias necessitate recusal to preserve judicial integrity. The relationship between Mr. Kapellas and Bass Berry & Sims PLC represents such extreme facts, raising a constitutionally intolerable risk of bias that mandates his disqualification to ensure fairness in these proceedings.

#### **Specific Incidents Illustrating Bias:**

(a) **April 3rd Subpoena Incident:** On April 3rd, I was designated as a witness in a trademark infringement case, with the initial subpoena failing to list my known email addresses. Attorney Paige Mills later amended the subpoena based on speculative assumptions about the status of my email accounts, potentially violating Federal Rule of Civil Procedure 45(d)(3)(A)(ii), which requires avoiding undue burden or expense. This unjustified amendment reflects a broader pattern of harassment and overreach.

(b) **Premature Assertions and Misleading Statements:** On June 13th, Ms. Mills prematurely updated the legal complaint, asserting my involvement in the alleged trademark infringement without concrete evidence from

(c) **Alarming Concerns Raised During Scheduling Conference Call:** I vehemently expressed grave concerns about the blatant disregard for procedural fairness during a conference call with the judge and the opposing counsel. Shockingly, I later discovered that Mr. Kapellas, with prior ties to Bass Berry & Sims PLC, authored several biased orders in the case through metadata analysis. This situation raises significant issues related to Federal Rule of Civil Procedure 28 and Canon 3 of the Code of Conduct for United States Judges, underlining the severity of the matter.

(d) **Biased Orders and Procedural Irregularities:** Mr. Kapellas' involvement in issuing orders against me, despite his former employment with the plaintiff's law firm, reflects a breach of judicial conduct standards. These actions suggest a prejudgment of the case during the discovery phase, violating Federal Rule of Civil Procedure 56, which requires a full factual record before ruling on the merits.

(e) **Urgent Concerns of Potential Ex-Parte Communications:** The suspicion of ex-parte communications between Mr. Kapellas and the judge or other court personnel is urgent. This contravenes Federal Rule of Civil Procedure 23(b) and the principles established in *In re School Asbestos Litigation*, 977 F.2d 764 (3d Cir. 1992), which prohibit such communications to ensure transparency and fairness, thereby highlighting the need for immediate action.

These specific incidents, combined with the applicable statutory and case law, demonstrate a clear pattern of judicial misconduct and bias that necessitates immediate judicial intervention. The disqualification of Mr. Kapellas and any other judicial personnel with conflicts of interest is essential to restore the integrity of these proceedings and ensure a fair trial. The principles of justice demand that these biases be addressed to uphold the judiciary's integrity and to ensure that I receive a fair and impartial hearing.

#### 3. Whistleblower Retaliation and Harassment

#### 3.1 Overview of Whistleblower Laws

Whistleblower laws are designed to protect individuals who expose illegal or unethical activities within their organizations. These laws provide a legal shield against retaliation, ensuring whistleblowers can report misconduct without fear of adverse consequences. The critical legislation includes:

- Dodd-Frank Wall Street Reform and Consumer Protection Act: Enacted in response to the financial crisis 2008, the Dodd-Frank Act, particularly Section 21F, provides robust protections for whistleblowers who report securities law violations. This section includes anti-retaliation provisions prohibiting employers from discharging, demoting, suspending, threatening, harassing, or discriminating against employees for providing information about securities violations to the Securities and Exchange Commission (SEC). The Act also offers monetary rewards to whistleblowers whose information leads to successful enforcement actions resulting in significant financial penalties.
- Sarbanes-Oxley Act (SOX): SOX was established to protect investors from fraudulent accounting
   activities by corporations. Section 806 of SOX specifically protects employees of publicly traded
   companies who report fraudulent activities from retaliation. This includes protections against dismissal,
   demotion, suspension, threats, and harassment. Remedies under SOX for whistleblower retaliation
   include reinstatement with the same seniority status, back pay with interest, and compensation for
   special damages, including litigation costs, expert witness fees, and reasonable attorney fees.
- False Claims Act (FCA): The FCA allows private individuals to file actions on behalf of the government (known as qui tam actions) against those who have defrauded governmental programs. The FCA includes anti-retaliation solid provisions to protect whistleblowers from adverse employment actions such as dismissal, demotion, suspension, harassment, or any other discrimination in the terms and

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 16 of 121 PageID 1893 conditions of employment. Whistleblowers can receive reinstatement, double back pay, interest on the back pay, and compensation for any special damages, including litigation costs and attorney fees.

• Whistleblower Protection Act (WPA): This act provides protections for federal employees who disclose information they reasonably believe is evidence of a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. The WPA prohibits retaliation against federal whistleblowers and allows for corrective action through the Office of Special Counsel (OSC), including reinstatement, back pay, and compensatory damages.

#### 3.2 Specific Incidents of Retaliation by MAA

Following my reports to regulatory bodies such as the SEC, MAA has engaged in retaliatory actions to undermine my professional standing and credibility. These actions include:

#### **Employment Retaliation:**

**1. Baseless Trademark Infringement Lawsuit:** MAA initiated a trademark infringement lawsuit against me without any verifiable evidence of trademark infringement. The websites and profiles they claimed I created had already been removed when I was named as a witness. This action violates Federal Rule of Civil Procedure 11, which mandates that claims must have factual validation. In Securities and Exchange Commission v. CMKM Diamonds Inc., the court sanctioned the filer for unsubstantiated claims, highlighting the necessity for factual evidence in legal filings.

The situation took a disturbing turn on April 3rd when, despite my limited role as a witness in the trademark infringement case, a deliberate and troubling action was taken regarding the subpoena issued in court. Initially, the subpoena did not include any of my known email addresses. This was no mere oversight; it was a calculated move by Attorney Paige Mills, who altered the subpoena to include my email addressesmphillyd@gmail.com and phillydee100@gmail.com—known to MAA. This unnecessary inclusion of my personal information at this stage of the proceedings was unwarranted and suggested fraudulent intent.

Mills seemed to assume these accounts were inactive, a belief purportedly supported by auto-responses indicating that the accounts were not in use. This assumption and the resulting actions were communicated to the SEC through a TCR (Tip, Complaint, or Referral). The deliberate alteration of the subpoena to include these details without substantial evidence, coupled with the premature subpoenaing of records from Verizon and my ISP to link IP addresses, likely constitutes a violation of Federal Rule of Civil Procedure 45(d)(3)(A)(ii), which mandates that subpoenas should avoid imposing undue burden or expense. The manipulative alteration of the subpoena to implicate me in the case, based on such flimsy premises, could be viewed as a fraudulent overreach deliberately aimed at involving me under false pretenses.

I became aware of the altered subpoena on April 29th via a notification from Google, but I withheld this information until July 31st. On June 13th, Ms. Mills prematurely updated the legal complaint to assert that I was the creator of the infringing website even though my email and ISP records were subpoenaed without the host, WIX, confirming my involvement. This premature assertion could be contested under Federal Rule of Civil Procedure 11, which requires factual validation for claims made in filings, as seen in Securities and Exchange Commission v. CMKM Diamonds Inc., where unsubstantiated claims led to sanctions against the filer.

During a conference call with Judge Lipman, Attorney Paige Mills, and Attorney Golwen, I raised significant concerns about the fairness of the proceedings. Specifically, I addressed the issue of the altered subpoena. Judge Lipman indicated a need to review the matter, questioning the necessity of the apparent charade if the intent was to eventually name me as a defendant. It remains unclear whether the evidence I submitted to the docket was ever thoroughly examined by the judge. I suspect that Michael Kapellas, a former attorney from the same firm as Ms. Mills and now a Judicial Law Clerk, may have been the one to review it, if at all.

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 18 of 121 PageID 1895

It was not until November that I uncovered the unsettling fact that Michael Kapellas had authored several orders in the case. Given his previous employment with Ms. Mills, the nature of these orders, which seemingly favor his former employer, casts a serious doubt on the impartiality of the judicial process. This situation poses significant concerns under the Federal Rules of Civil Procedure 28 and Canon 3 of the Code of Conduct for United States Judges, which mandate judicial impartiality and independence. The involvement of Kapellas in authoring these orders, despite his connections to one of the legal parties, underscores a troubling breach of these ethical and procedural standards.

Before this revelation, Mr. Kapellas continued to issue biased orders and motions against me, effectively prejudging the case during the discovery phase. Without complete evidence, this premature judgment suggests a breach of Federal Rule of Civil Procedure 56, which governs summary judgment and requires a full factual record before ruling on the case's merits. It is abundantly clear: The existence of ex parte communications with the judge or judicial law clerk contravenes Federal Rule of Civil Procedure 23(b) and the principles established in *In re School Asbestos Litigation*, 977 F.2d 764 (3d Cir. 1992), which strictly prohibit such communications to ensure transparency and fairness in judicial proceedings. Mr. Kapellas ended his employment with Bass Berry & Sims PLC in 2020, yet he continued to appear on the attorneys' website beyond this period. Ms. Mills claimed this employment ended several years ago, but three years is not several, and it is apparent they knew each other, being connected through different social media.

Mr. Kapellas' continued involvement in the case, despite the admission by opposing counsel that he previously worked for their law firm, is explicitly documented in the court docket. This raises significant concerns under Federal Rule of Civil Procedure 28, which mandates a judge's disqualification in any proceeding in which his impartiality might reasonably be questioned. Furthermore, Canon 2 of the Code of Conduct for United States Judges emphasizes that a judge should avoid impropriety and the appearance of impropriety in all activities. The ethical guidelines outlined by the American Bar Association's Model Code of Judicial Conduct similarly stress the importance of maintaining the actuality and the appearance of impartiality in the judiciary.

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 19 of 121 PageID 1896

Moreover, Mr. Kapellas's continued involvement in this case directly conflicts with the ethical standards and civil trial laws designed to ensure fairness and impartiality in legal proceedings. Specifically, Canon 3 of the Code of Conduct for United States Judges requires judges to perform the duties of the office impartially, competently, and diligently and to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. This includes avoiding any actions that would create even the appearance of bias or partiality.

The Federal Rules of Civil Procedure also underscore these principles, particularly Rule 28, which addresses the disqualification of judicial officers. This rule ensures that no judge or judicial officer should preside over a case where there is any reasonable question regarding their impartiality. Mr. Kapellas's connections with Ms. Mills, coupled with his actions in the current case, clearly breach these rules and ethical standards, calling into question the integrity of the judicial process.

In addition to these procedural and ethical violations, the broader implications of such conduct cannot be overstated. The appearance of impropriety and potential bias undermines public confidence in the judicial system, which relies on its judges' perceived and actual impartiality. Upholding the standards of judicial conduct is crucial for maintaining the legitimacy and fairness of legal proceedings, and any deviation from these standards, as evidenced in this case, necessitates serious scrutiny and appropriate corrective actions.

Moreover, MAA has baselessly alleged that I have made numerous disparaging comments about them, yet they have provided no substantiating evidence for these claims. Conversely, I have continuously submitted compelling evidence to the SEC since 2021 that counters their assertions of innocence. A detailed examination of MAA's corporate structure would reveal significant deficiencies in its internal controls, alongside documented instances where it has issued false and misleading statements to investors, the public, and its employees. Additionally, there is verifiable evidence that MAA has inaccurately reported its casualty expenses and maintained improper and unsafe policies regarding pet management, grill safety, and inadequate water remediation procedures.

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 20 of 121 PageID 1897

These discrepancies are evident in the documentation I have provided and corroborated by testimonies from hundreds of former employees, numerous negative resident reviews, and multiple complaints filed with the Better Business Bureau (BBB). For MAA to categorically deny these well-documented accusations in court documents starkly contradicts the evidence I have presented. Such denials could potentially breach Federal Rule of Civil Procedure 11, which obligates parties to avoid making arguments or filing claims that are not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law, mainly when such assertions are not factually supported. This rule underscores the requirement for factual accuracy and legal propriety in judicial filings.

The legal proceedings I am entangled in exhibit pronounced signs of judicial misconduct and biases, particularly highlighted in the improper issuance of a subpoena. This has disrupted my ability to defend effectively and significantly infringed upon my constitutional rights and due process. Immediate action is imperative to address these breaches and restore my ability to engage in legal defenses effectively. This situation is reminiscent of *United States v. Nixon*, 418 U.S. 683 (1974), where the Supreme Court underscored the fundamental necessity of due process rights in ensuring fair legal proceedings.

**2. False Allegations Regarding Online Reviews:** MAA has claimed that positive, five-star reviews purportedly written by me were intended to harass and intimidate their employees. Initially, MAA alleged that these reviews were overtly harassing and intimidating. However, as scrutiny increased, they altered their narrative, stating instead that the reviews were simply bizarre. This shift in their argument highlights their claims' flimsy and baseless nature.

For instance, MAA cited a review of a Baskin-Robbins store, which stated, "They have great ice cream," to intimidate my former superior, Jay Blackman. MAA contended that this innocuous statement was meant to be intimidating because Jay Blackman lives near the Baskin-Robbins location in question. This argument is particularly absurd given that Jay Blackman and I reside in the same city, making it plausible that I could

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 21 of 121 PageID 1898

comment on a local business without malicious intent. The transformation of a benign review into a supposed act of intimidation is an apparent attempt to fabricate evidence against me.

Such claims lack merit and appear to be deliberately manufactured to discredit me. This action violates the standards outlined in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), where the Supreme Court emphasized the necessity for factual plausibility in legal claims. The court in *Twombly* held that a complaint must contain enough factual matter, accepted as accurate, to suggest that the claim is plausible. By their nature, the reviews in question do not meet this standard of plausibility for harassment or intimidation.

Moreover, MAA's assertion that these reviews were meant to harass involves speculation about my state of mind, an operation of the mind, without any supporting evidence. Legal standards require more than speculative assumptions to substantiate claims of intent or harassment. In this context, the Supreme Court has consistently underscored the importance of factual evidence over conjecture in alleged misconduct cases. By failing to provide concrete evidence linking the reviews to any intent of harassment, MAA's allegations fall short of the required legal standards.

**3.** Allegations of Mail Tampering: MAA accused me of tampering with Jay Blackman's physical mail based on a mention of Kennebunkport, Maine, in a supposed review of a Danielle Steele novel. This baseless allegation further illustrates their intent to fabricate evidence against me. MAA's claim lacks substantive evidence, relying solely on speculative connections without factual support. Such accusations are designed to intimidate and discredit me as a whistleblower, undermining my credibility and professional standing.

The principles of due process, as highlighted in *Mathews v. Eldridge*, 424 U.S. 319 (1976), require fair procedures and substantial evidence before depriving individuals of their rights. In this case, MAA's unfounded accusations violate these principles by failing to provide the necessary evidence to substantiate their claims. This kind of conduct disregards legal standards and reflects a broader strategy of harassment and retaliation against me for exposing their unethical practices. The absence of credible evidence in their allegations further underscores the retaliatory nature of their actions and the lengths MAA will go to fabricate claims against me.

**4.** Accusations of Bugging MAA Computers: MAA has made unfounded claims that I bugged their computers and engaged in illegal surveillance. These severe accusations are unsupported by credible evidence and are intended to intimidate and discredit me. The lack of credible evidence for these claims violates the principles of due process, as highlighted in *Mathews v. Eldridge*, which requires fair procedures and evidence before depriving individuals of their rights. Additionally, the Supreme Court's decision in *United States v. Jones* underscored the importance of privacy and protection against unlawful surveillance, illustrating the gravity of such false allegations.

MAA's actions in making these baseless accusations constitute an abuse of legal procedures and reflect badfaith litigation practices, as addressed in *Chambers v. NASCO, Inc.* Their demands for irrelevant information and absence of reliable expert testimony, failing to meet standards set in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, emphasize the baseless nature of their claims. These accusations form part of a broader pattern of retaliation designed to undermine my credibility, consistent with behaviors prohibited under the Sarbanes-Oxley Act and the Dodd-Frank Act. The severe impact on my professional reputation from these unfounded accusations constitutes defamation, protected against principles established in *New York Times Co. v. Sullivan*. This motion seeks immediate judicial recognition of these retaliatory actions and appropriate remedial measures to prevent further harassment and ensure a fair trial.

**Unsubstantiated Claims of Multiple Email Ownership:** MAA provided an Excel spreadsheet listing over 40 email addresses they claimed I owned without any substantial evidence or explanation. This action exemplifies their intent to overwhelm and intimidate me through unfounded claims. The need for clarity and considerable

evidence in presenting such claims is emphasized in Ashcroft v. Iqbal, 556 U.S. 662 (2009), which requires specificity and factual support in legal allegations.

Allegations of Hacking Attempts: MAA's speculative claims regarding email ownership are not inherently illegal, even if these addresses were mine. However, their insistence on linking all these addresses to me without concrete evidence raises significant issues regarding the ethical and legal standards governing litigation. The speculative nature of these claims violates the principles of due process, as highlighted in Conley v. Gibson, 355 U.S. 41 (1957), which requires that substantive evidence rather than speculative assumptions back legal allegations.

Furthermore, MAA's repeated attempts to subpoena and hack into my email accounts caused me undue burden, forcing me to change my email address and phone number multiple times. This pattern of behavior reflects an abuse of process intended not to seek justice but to create a burdensome legal environment for me. Such actions contradict the Federal Rules of Civil Procedure, particularly Rule 45, which mandates that subpoenas must not impose undue burden or expense. The court in Blair v. United States, 250 U.S. 273 (1919), emphasized that subpoenas should be used judiciously and should not serve as tools for harassment. This ongoing harassment through baseless email claims underscores MAA's broader strategy. of retaliation and the necessity for judicial intervention to prevent further abuse and ensure a fair trial.

7. **Expert Witness Testimony:** MAA presented an expert witness to assert that emails sent to me could be traced back to a firewall I allegedly used, despite the widespread use of such firewalls by millions. This claim lacks specificity and evidentiary support, violating the standards set in *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993), requiring expert testimony to be reliable and relevant.

The expert witness provided by MAA made sweeping generalizations without presenting concrete evidence linking the emails directly to me. The claim regarding the firewall is particularly tenuous, given its widespread use. This lack of specificity fails to meet *Daubert*'s rigorous standards for admissible expert testimony, which must be based on scientifically valid reasoning or methodology that can be appropriately applied to the facts at issue.

The expert witness provided by MAA made sweeping generalizations without presenting concrete evidence linking the emails directly to me. The scientific reasoning applied by the expert witness relies on broad generalizations and fails to adhere to the rigorous standards established in *Daubert*. Specifically, examining network traffic and computer packets purportedly linking computers to my usage is scientifically flawed. The packet analysis process involves capturing and inspecting data packets transmitted over a network, which requires direct access to the network infrastructure and devices involved. Without a direct examination of my actual computer and network devices, such assertions are speculative and lack forensic integrity.

Furthermore, the expert's attempt to link me to a specific browser, MAC ID, or type of cell phone is equally problematic. MAC addresses, unique identifiers assigned to network interfaces, can be easily spoofed or altered. Browsers and operating systems used by millions of individuals cannot serve as reliable identifiers without corroborating evidence directly tying them to my specific activities. These devices' widespread use further undermines the expert's claim, as statistical probability alone cannot substantiate individual attribution.

During the deposition with Paige Mills in November, I indicated my willingness to have my devices examined. However, such an examination would constitute a significant invasion of privacy, especially given the harassing nature of this case. The forensic examination of digital devices must follow strict protocols to preserve the integrity of the evidence, as outlined in various guidelines for digital forensics, such as those provided by the National Institute of Standards and Technology (NIST). Any deviation from these protocols could result in contamination or manipulation of evidence, further questioning its reliability.

The flimsy evidence presented by MAA is susceptible to tampering and lacks the robustness required to prove any hacking attempts or link me to the alleged activities. To ensure validity, digital evidence must be authenticated through a chain of custody and verified by independent forensic analysis. The expert's failure to adhere to these standards and the absence of direct, verifiable evidence render their testimony unreliable and speculative.

The expert's testimony also appeared biased, aligning closely with MAA's narrative without impartial evaluation. This undermines the credibility of the claims and suggests an attempt to sway the court through paid expert opinion rather than factual evidence. This practice contradicts the principles of impartiality and objectivity required of expert witnesses, as emphasized in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), highlighting the necessity for expert testimony to be grounded in methodological rigor and relevance.

The lack of reliable methodology and factual basis in the expert's assertions further violates the Federal Rules of Evidence standards, particularly Rule 702. Rule 702 mandates that an expert's testimony be based on sufficient facts or data, be the product of reliable principles and methods, and that the expert has reliably applied these principles and techniques to the facts of the case. The expert witness failed to meet these criteria, rendering the testimony unreliable and irrelevant.

Additionally, the court in *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), reinforced the importance of a clear connection between the expert's conclusions and the underlying data. The speculative nature of the expert's claims about firewall usage and the lack of demonstrable linkage to me highlights the deficiency in evidentiary support and methodological soundness. This raises serious questions about the validity of the expert's conclusions and the overall integrity of MAA's case against me.

In conclusion, MAA's expert witness failed to meet the requirements for admissible expert testimony by relying on generalizations and speculative reasoning. The lack of direct examination of the actual devices and the potential for evidence tampering further undermine the credibility of the claims. This case exemplifies the necessity for rigorous, scientifically sound forensic analysis to support legal allegations, as mandated by established legal precedents and evidentiary standards.

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 26 of 121 PageID 1903

**8.** Invasion of Privacy: MAA issued multiple subpoenas to obtain my email addresses, ISP records, bank records, and other personal information without cause. These subpoenas extended beyond reasonable bounds, including demands for all info I possessed regarding MAA, Bass, Berry & Sims PLC, and any complaints I submitted to various regulatory boards, including the Board of Professional Responsibility and the Judicial Board. Such actions demonstrate MAA's intent to harass and intimidate rather than seek relevant information. This overreach is an abuse of process and violates the principles of due process, as highlighted in *Younger v. Harris*, 401 U.S. 37 (1971), which protects against the misuse of legal procedures to harass individuals. The expansive and intrusive nature of these subpoenas, lacking direct relevance to the case, contravenes Federal Rule of Civil Procedure 26, which mandates that discovery be relevant and proportional to the needs of the

case.

Furthermore, the subpoenas issued by MAA failed to establish a clear linkage between the account numbers and email addresses and myself. The information was often blocked out, preventing me from verifying the accuracy or relevance of the claims. This lack of transparency clearly violates my right to a fair defense and due process.

The inclusion of my wife in these legal demands extends the harassment to my family, causing undue stress and disruption. Subpoenaing a spouse without sufficient evidence or cause constitutes an overreach and invades the privacy rights protected under the Fourth Amendment. The Federal Rules of Civil Procedure, particularly Rule 45, stipulate that subpoenas must not impose undue burden or expense. The court in *Blair v. United States*, 250 U.S. 273 (1919), emphasized that subpoenas should be used judiciously and not as tools for harassment.

Additionally, these subpoenas demanded all items related to MAA, Bass, Berry & Sims PLC, and any complaints I submitted to various regulatory boards. Such broad and invasive demands, especially without clear relevance or cause, exemplify MAA's strategy to overwhelm and intimidate. This abuse of the discovery process and infringement on my privacy rights necessitates immediate judicial intervention to prevent further harassment and ensure that the legal proceedings adhere to fairness and due process principles.

Immediate judicial intervention is necessary to prevent further abuse and ensure that the legal proceedings adhere to fairness and due process principles. The expansive and intrusive subpoenas, lacking direct relevance to the case, illustrate MAA's broader strategy of using litigation as a tool for intimidation. This approach is inconsistent with the principles of justice and the ethical standards governing legal proceedings.

**9.** False Claims About My Sexual Orientation: After my whistleblower complaints and subsequent termination from MAA, the company engaged in spreading false claims about my sexual orientation, alleging that I am gay, to discredit further and harass me. These claims are entirely untrue, and I am married to a woman. While there is nothing wrong with being gay, the malicious intent behind these false statements was to undermine my professional reputation and personal dignity, exacerbating the hostile environment I was already facing due to my whistleblower activities. The dissemination of such false statements violates the standards outlined in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), which protects individuals from defamatory statements made with actual malice.

The false claims about my sexual orientation were a strategic move by MAA to retaliate against me for my whistleblower complaints. These defamatory statements propagated through multiple employees and various forms of communication, including text messages and internal discussions, aimed to create a hostile environment and damage my reputation based on fabricated information. The intent behind these false claims, rather than the content itself, constitutes defamation as it was designed to harm my standing professionally and personally.

This concerted effort to spread falsehoods is actionable under defamation laws, which protect against statements made with the intent to harm and without regard for their truthfulness. The impact of these actions has been profound, causing significant emotional distress and professional harm. This necessitates immediate judicial recognition and intervention to address this blatant misuse of defamatory tactics for retaliation.

### Additional Specific Incidents of Retaliation by MAA:

10. Harassment via Multiple Communication Channels: Following my whistleblower complaints, MAA and their agents launched a relentless campaign of harassment across multiple communication channels, including emails, texts, phone calls, and mail. This pervasive harassment was distressing enough to force me to change my phone number and email address multiple times in an attempt to evade the constant barrage. Despite these efforts to shield myself, the harassment continued unabated, with MAA employees, management, attorneys, and contractors employing increasingly aggressive tactics. This included unauthorized visits to my home, hacking attempts on my email accounts, and persistent unwanted communications designed to intimidate and silence me.

The continuous and multi-faceted nature of this harassment not only violates my right to privacy but also constitutes a clear breach of legal protections against unwarranted intrusion. In *Katz v. United States*, 389 U.S. 347 (1967), the Supreme Court underscored the constitutional right to be free from unjustified intrusion. This principle extends to actions by private entities engaged in such oppressive behaviors. MAA's deliberate strategy to create an environment of fear and anxiety through these actions exemplifies a blatant disregard for these fundamental rights. It underscores the need for judicial intervention to prevent further abuse and to uphold my constitutional protections.

**11. Excessive and Harassing Mailings:** In addition to digital and telephonic harassment, MAA and their attorneys have inundated me with over 100 mailings, many of which I perceive as fraudulent and intended to harass. These excessive communications were not only a tactic to overwhelm and distress me but also served to create a continuous reminder of their looming presence in my life. Managing and responding to these harassing mailings required significant time, emotional energy, and resources, diverting my attention from my

#### Document 106 Filed 06/24/24 Page 29 of 121 PageID 1906

family responsibilities and personal well-being. Flooding me with mail indicates MAA's broader strategy to intimidate and exhaust me.

The excessive and harassing nature of these mailings constitutes a clear violation of standards outlined in **Curtis Publishing Co. v. Butts**, 388 U.S. 130 (1967), which addresses the need for responsible and non-harassing communication. This case underscores the importance of ensuring that communications, particularly in the context of legal proceedings, are conducted in a manner that respects the dignity and rights of all parties involved. MAA's conduct, aimed at creating undue stress and disruption through incessant and unwarranted mailings, represents an abuse of process that further highlights their retaliatory motives and the need for protective judicial measures.

**12. Mail Fraud and Its Implications:** The actions by MAA and their attorneys may also constitute mail fraud under federal law. Under 18 U.S.C. § 1341, mail fraud is defined as any scheme to defraud or obtain money or property using false or fraudulent pretenses, representations, or promises. It involves using the United States Postal Service or any interstate mail carrier. To prove mail fraud, the prosecution must establish that the defendant intentionally participated in a scheme to defraud and used the mail to further that scheme.

In my case, the mailings sent by MAA, which I perceive as fraudulent, were intended to mislead, intimidate, and harass me. These mailings included false information and deceptive legal documents designed to coerce and pressure me into compliance. MAA and its attorneys potentially violated federal mail fraud statutes by using the mail to send these fraudulent documents.

Moreover, the civil implications of this mail fraud extend to violations of the Federal Rules of Civil Procedure, particularly Rule 11, which requires that all pleadings, motions, and other papers be signed and certified as truthful and not intended to harass or cause unnecessary delay. MAA's fraudulent and excessive mailings represent a breach of this rule, illustrating their malicious intent and abusive litigation practices. **13. Civil Trial Code and Legal Protections:** The Tennessee Rules of Civil Procedure also provide mechanisms to address harassing conduct. Rule 26.02 limits the scope of discovery to prevent undue burden or harassment. MAA's persistent and excessive mailings can be viewed as a violation of this rule, given that the primary intent behind these communications appears to be harassment rather than a legitimate legal process.

Additionally, under Tennessee Code Annotated § 39-17-315, harassment includes actions intended to frighten, intimidate, or cause emotional distress to another person. The excessive mailings from MAA fall within this definition, as they were designed to create a hostile and stressful environment for me, thus violating state harassment laws. The higher court must recognize this pattern of abuse and take appropriate measures to protect my rights and ensure that MAA is held accountable for their retaliatory and unlawful conduct (Exhibit A).

12. **Misleading Statements to the Court:** Throughout these proceedings, MAA's attorneys have repeatedly made misleading statements to the court, intending to paint me in a negative light without any factual basis. These misleading statements have harmed my reputation and influenced the court's perception of my actions and character, affecting the proceedings' fairness. Such actions clearly violate Rule 3.3 of the Tennessee Rules of Professional Conduct, which mandates that attorneys maintain candor towards the tribunal. In *In re Snyder*, 472 U.S. 634 (1985), the Supreme Court emphasized the importance of honesty and integrity in legal proceedings, sanctioning an attorney for deliberately misleading the court.

These misleading statements by MAA's legal team were strategically employed to undermine my credibility and position in the case. They have made unfounded allegations and presented information in a way that distorts the truth, thereby creating a biased narrative against me. This conduct violates professional ethical standards and undermines the integrity of the judicial process. The court's reliance on such deceptive tactics compromises the fairness of the trial and necessitates a thorough examination and correction of these misleading representations to ensure justice is served. 13.

Manipulation of Trial Procedures: MAA has manipulated trial procedures as a deliberate strategy to prolong litigation and delay justice. This includes the strategic prolongation of proceedings and the subsequent striking of trial and pre-trial conference dates, as well as actions that create procedural obstacles and frustrate the timely resolution of the case. These tactics are designed to exhaust my resources and resolve, coercing me into an unfavorable settlement or abandoning my claims. Such manipulation is a blatant violation of my right to a fair trial as protected under the Sixth Amendment.

Furthermore, I have substantial grounds to believe that MAA uses fraudulently obtained court orders to bar me from disseminating information to government agencies through FOIA requests. This tactic prevents me from informing the public, investors, and employees about the proceedings and MAA's practices. Such misuse of judicial authority may constitute an abuse of process, which is actionable under the legal doctrine that prohibits the improper use of judicial tools for purposes ulterior to those for which they are designed (see Buckley v. Fitzsimmons, 509 U.S. 259 (1993) for abuse of process claims; United States v. Kojayan, 8 F.3d 1315 (9th Cir. 1993) regarding the misuse of legal authority).

The integrity of the judicial process relies on the fair and impartial administration of justice, free from undue manipulation and delays. In In re Murchison, 349 U.S. 133 (1955), the Supreme Court highlighted the fundamental importance of an impartial tribunal and fair trial procedures. MAA's actions, aimed at manipulating the trial process to their advantage, directly contravene these principles and undermine the foundation of a fair legal system. The deliberate delays and procedural obstructions not only prejudice my case but also erode public confidence in the judicial process, necessitating immediate corrective measures to restore fairness and integrity.

14. Threatening Legal Action for Protected Speech: MAA has threatened legal action against me for making statements protected under the First Amendment. This attempt to chill free speech and silence my criticisms of MAA's practices violates my constitutional rights. The First Amendment protects individuals from retaliation for their speech, mainly concerning matters of public concern or whistleblowing activities. MAA's

threats are intended to intimidate me into silence and prevent me from exposing their unethical and illegal practices.

The Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), established that speech is protected under the First Amendment unless directed to incite imminent lawless action. MAA's attempts to suppress my speech through legal threats do not meet this standard and are, therefore, unconstitutional. By attempting to stifle my speech, MAA is infringing on my rights and seeking to prevent disseminating information vital to public interest and regulatory oversight. Such actions require judicial intervention to protect my constitutional rights and ensure whistleblowers can speak out without fear of retaliation.

15. Interference with Employment Opportunities: MAA has actively interfered with my employment opportunities by contacting current employers that employ previous employees of MAA and making defamatory statements about me. Additionally, MAA has inaccurately reported my departure as a "termination" rather than a voluntary resignation. This terminology misuse contradicts MAA's claim that I voluntarily left the organization and cast me in a negative light to potential employers. The term "termination" carries negative connotations that can significantly impact one's professional reputation and hinder future employment opportunities.

Such actions by MAA constitute tortious interference with prospective economic advantage, a legal claim recognized in *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal.4th 376 (1995), where the court acknowledged the wrongful disruption of business relationships. MAA's misleading communications and defamatory statements to current and potential employers are intended to damage my reputation and prevent me from obtaining employment. This conduct violates my rights and exemplifies MAA's broader strategy of retaliation and harassment.

The legal principles governing tortious interference protect individuals from unjustified interference in their business relationships, and MAA's actions fall within this prohibited conduct. Furthermore, the inconsistency in

their statements regarding the nature of my departure exacerbates the defamation, necessitating judicial intervention to address these wrongful acts and provide redress for the harm caused to my professional and personal life.

16. **Witness Manipulation and Retaliation:** MAA's actions in rehiring a former property manager, a crucial witness in my potential EEOC lawsuit, to which I won the right to sue, demonstrate a clear strategy of witness manipulation and retaliatory conduct. This individual had previously witnessed disparaging and discriminatory comments made by my supervisor, Jay Blackman, and was also subject to adverse employment actions for disclosing his anxiety, which resulted in his forced resignation. Despite being marked as "non-hirable" in their Workday system, MAA's decision to rehire this individual after he became a witness in my lawsuit suggests an attempt to influence his testimony and undermine the integrity of the legal process.

The false allegations regarding financial misconduct are intended to undermine my credibility and position in the case. By making such claims without evidence, MAA is engaging in a smear campaign that violates the principles of honesty and integrity in legal proceedings. These actions not only harm my reputation but also distract from the substantive issues of the case, requiring judicial scrutiny and correction to ensure that justice is served.

17. **Filing Frivolous Motions:** MAA has filed numerous frivolous motions throughout this litigation, burdening me with potential legal costs and delaying the proceedings. These motions lack substantive merit and are intended to exhaust my resources and resolve, coercing me into an unfavorable settlement or abandoning my claims. Such tactics are abusive and contravene the standards for filing motions, as discussed in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), where the Supreme Court upheld sanctions for bad-faith litigation practices.

The filing of frivolous motions is a clear abuse of the judicial process, designed to create procedural obstacles and frustrate the fair resolution of the case. This conduct undermines the integrity of the legal system and imposes undue strain on me as I am forced to respond to baseless legal actions. Judicial intervention is necessary to address these abusive tactics and ensure the litigation proceeds fairly, free from harassment and undue delay.

18. **Unsubstantiated Criminal Accusations:** During a recorded deposition with attorney Paige Mills, MAA accused me of attempting to hack their system, labeling it a federal crime. They attributed this accusation to an incident involving a password reset in Okta, a security management platform hundreds of thousands of people used. However, MAA has failed to present concrete evidence that I breached their system or that such actions constituted a federal crime. The evidence they have given is fundamentally flawed and does not meet the legal standards for proving such allegations.

Accusing someone of a federal crime in a legal setting without proper evidence is reckless. It could be seen as an attempt to manipulate legal proceedings and unduly influence the outcome. This conduct may violate the provisions against the wrongful use of civil proceedings and malicious prosecution, as established in cases like *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), emphasizing the importance of substantiating legal actions with genuine facts and evidence.

The wrongful accusation of committing a federal crime has significant implications, potentially causing severe personal distress and legal consequences. Such accusations require immediate judicial scrutiny to determine their validity and to ensure that legal proceedings are not being used as tools for harassment or coercion. MAA's actions, if found to be without merit, could represent a misuse of legal processes, warranting corrective measures to prevent abuse and protect the integrity of the judicial system

19. **Termination Following Salary Complaint and Disclosure of Anxiety:** In 2021, I raised concerns with my supervisor, Jay Blackman, regarding the disparity in salary between myself and my Maintenance Supervisor, a subordinate earning more than me. Jay Blackman initially indicated he would investigate the matter. However, as soon as I mentioned my anxiety and the impact it was having on my ability to work, Jay Blackman

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 35 of 121 PageID 1912

terminated my employment abruptly. This sudden termination was an explicit retaliatory action taken in response to my disclosure of a disability and my complaints about unequal pay.

The abrupt termination following my disclosure of anxiety and concerns about salary disparity is a blatant act of retaliation. Such actions violate protections against discrimination and retaliation under the Americans with Disabilities Act (ADA), which mandates reasonable accommodations and prohibits adverse actions based on disability disclosure. Judicial intervention is necessary to address this retaliatory termination and ensure compliance with ADA protections.

20. **Blocked Communication with Employee Relations:** After my termination, I filed whistleblower complaints with MAA and emailed Employee Relations to report the retaliation and seek redress. In response, the COO at the time, Mr. Tom Grimes, had my email address (mphillyd@gmail.com) blocked from the company's email server. This deliberate action was intended to prevent me from communicating further about my whistleblower complaints and seeking assistance from the company's internal mechanisms.

Blocking my email address to prevent communication with Employee Relations is a deliberate attempt to silence my whistleblower complaints and avoid addressing the issues I raised. This conduct violates principles of transparency and accountability within the organization and undermines the protections afforded to whistleblowers. Judicial intervention is necessary to address this obstruction and ensure my complaints are adequately heard and addressed.

21. **Filing of Whistleblower Complaints with Regulatory Bodies:** In addition to the internal complaints, I filed whistleblower complaints with the SEC and the IRS, exposing the fraudulent activities and financial misconduct I had observed at MAA. These complaints aimed to bring to light the severe ethical and legal violations committed by MAA.

Filing whistleblower complaints with regulatory bodies are protected under federal whistleblower laws, including the Dodd-Frank Act and the Sarbanes-Oxley Act. These laws protect individuals who report corporate misconduct from retaliation and provide mechanisms for addressing the reported violations. Judicial recognition of these protections is necessary to safeguard my rights as a whistleblower and ensure that MAA is held accountable for any retaliatory actions.

22. **EEOC Complaint for Disability Discrimination:** I also filed a complaint with the Equal Employment Opportunity Commission (EEOC) for discrimination based on my disability. The lawsuit detailed the retaliatory actions taken by MAA, including my wrongful termination and the blocking of my communication with Employee Relations, as well as the broader pattern of harassment and discrimination I had experienced.

The EEOC lawsuit underscores the broader pattern of retaliation and discrimination I faced following my whistleblower activities and disclosure of a disability. The Americans with Disabilities Act (ADA) provides robust protections against such discriminatory actions, and judicial intervention is necessary to address these violations and provide redress for the harm caused.

**23. Claims of "Acting," "Obsessed," or Having a "Vendetta" Against MAA:** Throughout this legal proceeding, MAA has consistently claimed that I am "acting," "obsessed," or that I have a "vendetta" against the company since 2021. These assertions have been made in documents sent to the EEOC and other regulatory agencies. This characterization appears to be based on a reasonable accommodation provided by my superiors in 2019, which labeled me as having a "mental illness." Such claims are false but discriminatory and retaliatory, as they aim to discredit my legitimate whistleblower complaints and undermine my credibility. These actions violate protections under the Americans with Disabilities Act (ADA), which prohibits discrimination based on disability and retaliation for asserting one's rights under the law, as emphasized in *Barnett v. U.S. Air, Inc.*, 535 U.S. 391 (2002). The use of my mental health as a means to discredit me also infringes upon the protections afforded by the Dodd-Frank Act and the Sarbanes-Oxley Act, which safeguard whistleblowers from retaliatory actions.

These incidents collectively demonstrate a systematic attempt by MAA to retaliate against me for my whistleblower activities. The legal protections afforded by the Dodd-Frank Act, Sarbanes-Oxley Act, and other

immediate judicial recognition of these retaliatory actions and appropriate remedial measures to prevent further harassment and ensure a fair trial.

### 3.3 Harassment by MAA Employees, Management, Attorneys, and Contractors

The harassment I endured extended beyond my immediate employment and included actions taken by MAA employees, management, attorneys, and contractors. This harassment was pervasive and aimed at intimidating and discrediting me:

**Hostile Work Environment:** Throughout my tenure at MAA, I was subjected to a hostile work environment, particularly under the supervision of Jay Blackman. He frequently made derogatory comments about my appearance, weight, and drinking habits, creating a toxic and demeaning atmosphere. My attempts to address these issues were consistently met with further hostility and accusations of being combative or argumentative. This behavior not only violated company policies but also created an unbearable working condition that ultimately contributed to my mental and emotional distress.

**Unauthorized Subpoena and Intrusive Discovery:** MAA's attorneys, including those from Bass Berry & Sims PLC, employed aggressive legal tactics designed to harass and intimidate me. They amended subpoenas to include my personal email addresses and financial records without proper justification, violating Rule 45 of the Federal Rules of Civil Procedure (FRCP). This intrusive discovery process was intended to cause undue stress and burden, compelling me to navigate a complex legal landscape without sufficient resources or support. The invasive nature of these subpoenas underscores the malicious intent behind these actions, aiming to overwhelm me with legal pressures and intrude into my personal life.

**Persistent Calls and Texts:** I was bombarded with persistent calls and texts from MAA employees and contractors after my termination. These communications were not merely attempts to maintain contact but were designed to intimidate and pressure me into silence. The constant barrage of messages exacerbated my

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 38 of 121 PageID 1915

anxiety and stress, creating a relentless environment of harassment that extended well beyond my professional life and into my personal space. This continuous intrusion severely impacted my mental health, making it difficult to find respite from the ongoing intimidation.

Hacking and Privacy Violations: My email accounts were hacked multiple times, and unauthorized access attempts were made. These actions represent an apparent effort to intimidate me and gain unauthorized access to my personal information. Such privacy violations are egregious and intended to instill fear, demonstrating MAA's willingness to employ unethical and illegal means to silence me. The breaches of my email accounts highlight the extreme lengths MAA and its agents were willing to go to undermine my credibility and personal security.

**Visits by Contractors:** MAA-affiliated contractors visited my residence without prior notice, ostensibly for property maintenance but with the explicit intention of harassment and intimidation. These visits were invasive, unannounced, and added to the hostile environment I was experiencing. The presence of these contractors at my home served as a constant reminder of MAA's reach and influence, further exacerbating my feelings of vulnerability and stress. This tactic of sending contractors to my residence underscores the personal nature of the harassment I faced.

**Forced Changes to Contact Information:** Due to the relentless harassment, I was compelled to change my email address and phone number multiple times. This necessity to alter my contact information repeatedly underscores the severity of MAA and its agents' intrusive and threatening communications. The continuous need to change my contact details not only disrupted my personal and professional life but also demonstrated the persistent nature of the harassment. This constant harassment through multiple communication channels highlights the extent of MAA's efforts to intimidate and control me.

These actions collectively illustrate a systematic attempt by MAA to harass, intimidate, and discredit me following my whistleblower activities. The pervasive nature of this harassment, extending through various

means and channels, underscores the need for immediate judicial recognition and appropriate remedial measures to prevent further harassment and ensure a fair trial.

## 3.4 Summary of Whistleblower Complaints (2021 and 2024) documents.

**2021 Whistleblower Complaints:** In April 2021, I submitted a whistleblower complaint detailing fraudulent accounting practices at Mid-America Apartment Communities (MAA). Specifically, I observed that MAA was misclassifying regular property expenses as casualty losses. This deceptive practice involved improperly categorizing expenses related to a winter storm and various property maintenance costs to inflate casualty loss figures and manipulate the financial statements.

## • Detailed Evidence and Correspondence:

I provided substantial documentary evidence to MAA to support my allegations. This evidence included multiple emails and internal documents illustrating specific instances of fraudulent misclassification:

- Ice Storm Casualty Expenses: The expenses from the 3/12/21 ice storm were falsely categorized as casualty losses. I submitted several documents, including "3-12-21 Ice Storm Casualty.pdf," demonstrating that these expenses should have been recorded as regular property maintenance costs. The misclassified expenses included typical repairs such as fixing broken pipes and roof repairs, which are regular maintenance tasks rather than extraordinary casualty losses. By misclassifying these expenses, MAA artificially inflated its casualty loss figures to manipulate its financial statements and present a distorted view of its economic health.
- Tree Removal and Other Maintenance Costs: Regular or capital maintenance expenses, such as tree removal, were inappropriately classified as casualty losses. For instance, "Fake Tree Removal 12-1-20.pdf" detailed tree removal activities unrelated to any casualty event. These costs were part of routine maintenance that should have been accounted for as such rather than being categorized under

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 40 of 121 PageID 1917 casualty losses. This misclassification was a deliberate attempt to conceal regular operating expenses

and present a more favorable financial position than was accurate.

General Ledger Code Issues: I highlighted the systemic issue of using General Ledger Code CLS to
categorize non-casualty items. This practice was pervasive across multiple properties and not limited to
isolated incidents. Routine expenses such as landscaping, minor repairs, and upkeep were all
inappropriately classified under casualty losses using this ledger code. This widespread misuse of the
CLS code indicates a deliberate strategy to manipulate the financial records and inflate casualty losses
to mislead stakeholders about the actual economic performance of MAA.

Throughout the year, I continued to follow up on my initial complaint. On December 1, 2021, I emailed Glenn Russell, the SVP of Internal Audit at MAA, seeking an update on my April submission. Despite my persistent efforts, MAA dismissed my concerns and failed to respond comprehensively or take corrective action. My emails detailed ongoing fraudulent activities and provided additional documentation, including internal communications and further instances of expense misclassification. For example, I provided evidence of discussions within MAA where senior management instructed staff to categorize regular maintenance expenses as casualty losses to manipulate financial outcomes. MAA's lack of response and corrective action undermines the principles outlined in the Sarbanes-Oxley Act, emphasizing the need for accurate financial reporting and protection against fraudulent activities. In addition to the evidence provided to MAA, I submitted a substantial plethora of information, documents, emails, phone calls, conference calls, and other evidence to regulatory agencies such as the SEC, FTC, IRS, DOJ, and more that further illustrate the systematic nature of MAA's fraudulent accounting practices. These additional documents, not shared with MAA, contain detailed examples of similar instances of expense misclassification, demonstrating a consistent pattern of financial manipulation. Furthermore, I provided many emails, internal documents, screenshots, USB drives, and communications about antitrust issues at MAA.

Antitrust Issues: This extensive documentation included market surveys conducted with competitors and shared documents among competing companies, revealing a coordinated effort to manipulate market conditions. Specifically, I uncovered Excel spreadsheets and records showing MAA's involvement in price-fixing activities with other property management firms. These records indicated that MAA was artificially inflating rental prices across various markets in collusion with its competitors.

Much of the evidence centered on MAA's use of RealPage software, a tool to synchronize rental pricing strategies with competitors. The software facilitated the sharing of pricing data, allowing MAA and its competitors to collude effectively and drive up market rents systematically. This collusion distorted the competitive landscape and directly and detrimentally impacted renters, who faced higher rental prices due to these anti-competitive practices.

In addition to documentary evidence, I provided phone call recordings, pricing calls, amenity review calls, and more. These recordings captured discussions and agreements among MAA and its competitors to coordinate pricing, rental increases, and special offers, further substantiating the claims of antitrust violations. The communications and documents detailed specific instances where MAA and other companies exchanged sensitive information about pricing strategies, market conditions, and promotional tactics. These interactions aimed to stabilize and increase rental rates, undermining the principles of fair competition. The antitrust violations were systematic and widespread, involving high-level executives and detailed operational strategies to manipulate the rental market.

Moreover, I included emails and internal memos that explicitly discussed the intent to use RealPage software to fix prices and avoid competitive pressures. These documents illustrated how MAA and its competitors effectively created a rental pricing cartel, sharing data and strategies to maintain artificially high rent levels across various regions.

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 42 of 121 PageID 1919

**Definition and Purpose of Antitrust in the Apartment Rental Business:** Antitrust laws aim to prevent practices that restrict competition, control prices, or otherwise negatively impact the market and consumer choice. In the apartment rental industry, these laws ensure that property owners, management companies, and related service providers engage in fair competition, which helps keep rental prices competitive and prevents the control of supply by a few dominant players.

**Relevant Legal Framework:** The primary statutes governing antitrust matters in the United States include the Sherman Act (1890), the Clayton Act (1914), and the Federal Trade Commission Act (1914). These laws collectively aim to prohibit:

- **Price Fixing:** Illegal under Section 1 of the Sherman Act, price fixing in the apartment rental market would occur if competing landlords or property management companies agree to set the same rental prices or price increases, thereby eliminating competition and harming tenants by higher prices.
- Market Division: This practice, also prohibited under Section 1 of the Sherman Act, involves
  competitors agreeing not to compete within certain geographic areas or among certain customer
  segments. In the rental market, this could mean property managers agree not to operate in certain
  parts of a city to avoid competition.
- Monopolization: Section 2 of the Sherman Act prohibits actions aimed at establishing or maintaining a monopoly. In the housing sector, this could involve a company acquiring a large number of rental properties in a market to control prices or availability.
- Exclusive Deals and Tying Arrangements: Prohibited under the Clayton Act, these practices could manifest as a landlord requiring tenants to use specific service providers (like internet or utilities), which could unfairly restrict tenant choices and exclude other businesses.

Antitrust Violations and Enforcement: The enforcement of these antitrust laws in the apartment rental business typically involves scrutinizing mergers between large property management companies,

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 43 of 121 PageID 1920 investigating collective pricing strategies, and addressing complaints of anti-competitive conduct. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) are the primary federal agencies responsible for antitrust enforcement, with state attorneys general also playing a crucial role at the state level.

**Legal Precedents and Cases:** Several cases have set important precedents in antitrust law as it relates to real estate and housing. For instance, decisions in cases like *United States v. National Association of Real Estate Boards* have clarified the application of antitrust laws to real estate practices, reinforcing that activities like setting standard commission rates among competing agencies can violate antitrust provisions.

Deceptive Sales Practices: I meticulously tracked "rent specials" offered at 50 properties over the two years following my employment with MAA. These specials often advertised significant discounts, such as \$1000 off the first month's rent. However, my investigation revealed that the rent prices were subsequently increased, with the \$1000 discount effectively redistributed across the following 12 months, nullifying any actual savings for tenants. This practice misled consumers about the exact cost benefits of the specials. It may constitute a deceptive trade practice under the Federal Trade Commission Act (FTC Act), specifically sections concerning unfair or deceptive acts affecting commerce. Further substantiating these findings, I provided recorded phone calls from pricing discussions among MAA's pricing analysts. In these recordings, the analysts can be heard acknowledging and joking about the deceptive nature of these promotions, referring to them as the "JC Penney" unique. This term implies a strategy designed to mislead customers by presenting an illusion of savings. This tactic potentially violates the Truth in Lending Act (TILA), which mandates clear, accurate, and non-misleading presentation of pricing information.

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 44 of 121 PageID 1921

Additionally, the Consumer Financial Protection Bureau (CFPB) and state-level consumer protection laws, which protect against misleading and deceptive advertising, could scrutinize these practices. For example, the California Unfair Competition Law (UCL) prohibits unlawful, unfair, or fraudulent business acts, and the New York General Business Law § 349 bans deceptive acts and practices in any business.

These recorded conversations and the data I collected are critical evidence of MAA's systematic deceptive practices, which could potentially violate consumer protection laws prohibiting misleading advertisements and pricing schemes. The implications of this evidence are severe, suggesting a deliberate strategy to manipulate tenant perceptions and financial decisions. This matter merits thorough investigation and potential regulatory scrutiny to address any breaches of consumer rights and ensure accountability for deceptive business practices.

Additional Unfair Business Practices: MAA's business practices involve exaggerated rental increases
and excessive fees, which are strategically designed to maximize profits at tenants' expense. Notably,
MAA enforces a stringent policy with no grace period for rent payments; late fees are assessed
immediately after the due date, starting on the 2nd of the month, with no courtesy waiver even for a
first-time delay. This results in extraordinarily high late fee charges, significantly increasing the financial
burden on tenants. Additionally, MAA has devised methods to charge tenants double rent for breaking
their lease by reclassifying these extra charges as fees rather than rent.

These practices potentially violate the Federal Trade Commission Act, specifically under sections dealing with unfair or deceptive acts or practices (15 U.S.C. §§ 45(a)). The lack of a grace period and the immediate imposition of late fees could be considered unfair practices under this statute. Furthermore, these actions may contravene state-specific laws such as California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.), prohibiting unfair, fraudulent, or deceptive business acts or practices. Additionally, recharacterizing rent as fees to circumvent protections afforded to tenants might breach

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 45 of 121 PageID 1922

local tenant protection statutes, such as those enacted in New York City that provide specific guidelines on collecting fees and rent increases (NYC Admin Code §§ 26-511).

The cumulative effect of MAA's strategies undermines tenant trust and loyalty and could potentially attract legal challenges due to their unfair nature. Given the ethical and legal concerns raised, a careful review of MAA's fee policies and rental practices is warranted. This could necessitate regulatory scrutiny to ensure compliance with fair housing and consumer protection laws, ultimately protecting tenants from exploitative business practices.

The abundance of evidence I provided to the SEC, FTC, IRS, DOJ, and other regulatory bodies underscores the severity of MAA's antitrust violations. These practices violated federal antitrust laws and compromised the integrity of the rental market, harming consumers and undermining trust in the property management industry. This comprehensive body of evidence highlights the urgent need for regulatory action to address these significant legal and ethical standards breaches.

- Ongoing Issues and Lack of Internal Controls: This issue of misclassifying expenses as casualty losses
  has been ongoing and reflects a complete lack of internal controls at MAA. The fraudulent accounting
  practices were not isolated incidents but part of a systemic issue within the organization. Senior
  management's involvement and the repetitive nature of these practices indicate a deliberate strategy
  to manipulate financial statements. Regular maintenance costs, which are predictable and should be
  part of standard budgeting processes, were consistently misclassified to portray an inaccurate financial
  position. The internal audit function at MAA failed to identify and rectify these fraudulent practices,
  raising serious concerns about the effectiveness and independence of the internal audit processes.
  Despite multiple whistleblower submissions and substantial evidence provided, the internal audit
  department did not take necessary corrective actions, reflecting a lack of diligence and oversight.
- **Managing Their Own Insurance "Program":** MAA's mismanagement extends to its insurance program, which has been systematically exploited to manipulate financial outcomes since at least 2009. The

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 46 of 121 PageID 1923

company falsely reported damage and exaggerated casualty losses to benefit from its insurance setup, thereby undermining the integrity of its financial reporting. This practice began with changes in their internal policies in 2009, when they adjusted the wording and classifications used in their insurance claims to facilitate this fraudulent activity.

For example, MAA consistently exaggerated claims about storm damages, which were artificially used to reduce reported expenses. Routine maintenance costs, such as minor repairs and upkeep that should have been accounted for in the operational budget, were instead classified as casualty losses and claimed under their insurance program. This strategic misclassification allowed MAA to shift significant costs away from its financial statements, presenting an inflated view of profitability to investors and stakeholders.

My evidence includes detailed records of these exaggerated claims, such as inflated damage reports from the 3/12/21 ice storm. These reports documented typical maintenance issues, like broken pipes and roof repairs, as major casualty events. By doing so, MAA could file substantial insurance claims for these routine expenses, misrepresenting them as extraordinary losses. This misrepresentation distorts the financial statements and indicates a potential abuse of the insurance program, raising significant ethical and legal concerns about MAA's practices.

Furthermore, internal communications revealed that senior management was aware of this fraudulent activity. Emails and internal memos detailed instructions from high-level executives to categorize regular maintenance costs under casualty losses to exploit the insurance program. This systemic approach to misreporting demonstrates a deliberate strategy to manipulate financial results and deceive regulatory bodies, investors, and the public.

To further substantiate these claims, I provided thousands of incident reports throughout the company demonstrating a consistent pattern of this fraudulent activity. These incident reports, accompanying

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 47 of 121 PageID 1924

Excel files, and phone call recordings provided comprehensive evidence of the widespread nature of the fraud. The Excel files detailed specific instances of misclassified expenses across various properties. At the same time, the phone call recordings captured discussions among MAA employees about how to manipulate the classifications to benefit from the insurance program.

During a recorded investor conference webinar, MAA CEO Eric Bolton was questioned about the company's insurance premiums. He reacted with a smirk before quickly passing the query to Tim Argo, their Executive VP and chief Strategy & Analysis Officer. Argo provided an evasive response, suggesting that they did not anticipate substantial increases in premiums due to MAA's longstanding 30-year relationships with insurance providers. He further claimed that MAA representatives had even traveled to meet with "the boys at Lloyd's of London," a statement that seems highly dubious.

From my tenure at MAA, the company's dealings with insurance companies were highly specific and limited; we never engaged with insurance providers beyond submitting claims related to resident renter's policies in cases where a resident was at fault and liable for damages. This discrepancy in MAA's reported insurance dealings raises severe concerns about the accuracy and honesty of the statements made to investors. Such discrepancies could potentially mislead investors about the nature and scope of MAA's risk management practices and insurance relationships.

This situation exemplifies the type of conduct that could fall afoul of securities law, particularly under the Securities Exchange Act of 1934, which governs the disclosures made by publicly traded companies. Section 10(b) and Rule 10b-5 of this act prohibit making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. The portrayal of extensive insurance interactions, if indeed exaggerated or fabricated, could potentially mislead investors, necessitating a review under these provisions to ensure that MAA's communications are transparent and truthful, thereby protecting investor interests and maintaining market integrity.

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 48 of 121 PageID 1925

The manipulation of their insurance program has severe implications, as it compromises the transparency and accuracy of MAA's financial reporting. Such practices violate generally accepted accounting principles (GAAP) and breach legal and ethical standards governing corporate conduct. The consistent abuse of the insurance program reflects a broader issue of inadequate internal controls and governance within MAA, necessitating immediate regulatory scrutiny and intervention.

Conflicts of Interest: Mid-America Apartment Communities, Inc. (MAA) 's pattern of behavior suggests significant conflicts of interest that may compromise the necessary ethical standards and transparency in corporate governance. The continuous engagement of the same audit firm, ineffective relaying of whistleblower complaints to the board, and longstanding relationships with the same legal team to manage complex "REIT" setups indicate a troubling pattern undermining the integrity of MAA's operations.

At MAA, the whistleblower hotline, a crucial component for reporting unethical practices, is managed by Leslie B.C. Wolfgang, Senior VP, Chief Ethics & Compliance Officer, and Corporate Secretary. Her extensive role includes intercepting communications intended for the board of directors and authoring the company's ethics documents, which are not publicly filed. Such centralization raises severe concerns about the independence needed for an effective complaint resolution mechanism, as Ms. Wolfgang has been with MAA since 1995, and her position might influence the impartiality of the process.

This structure undermines the integrity of the whistleblower system and restricts direct access to the board, potentially stifling genuine grievances from reaching independent ears without fear of interception or bias. To ensure accurate, ethical compliance and foster an environment supportive of transparent communication, MAA must establish more independent channels for reporting misconduct. This involves creating direct, confidential access to the board that bypasses any internal gatekeepers, thereby enhancing the effectiveness of the governance framework and reinforcing trust among employees and stakeholders.

These practices extend to MAA's internal staffing strategies, where former auditors and legal consultants are employed in roles that blur the lines between independent oversight and internal operations. For example, the hiring of an Executive vice president, Chief Administrative Officer, and General Counsel with deep ties to law firms involved in reviewing and preparing MAA's financials, alongside the appointment of a former Ernst and Young partner—who served as MAA's auditor for two decades—as SVP of IT operations exemplifies the deep-seated conflicts of interest.

Moreover, the recent unexplained change in MAA's stock symbol from Inc. to LP, around the time of their NAREIT conference presentation, raises additional concerns. This alteration was not reported in SEC filings, a breach of Sections 13 and 15(d) of the Securities Exchange Act of 1934, undermining transparency and potentially misleading investors.

These actions do not merely reflect poor governance; they expose a systematic attempt to weave a network of influence that potentially shields MAA from scrutiny and masks its operations from genuine independent review. Such conflicts of interest may not only mislead stakeholders but also undermine public trust in the fairness and integrity of corporate governance.

The circumstances outlined demand a thorough examination beyond superficial compliance checks, given that these entrenched conflicts of interest can skew decision-making and mislead the public, including investors and regulatory bodies. Addressing these issues is imperative to uphold the principles of fairness and transparency in the corporate sector.

• Use of Non-GAAP Measures: MAA has been using several non-GAAP measures to manipulate its financial statements further, presenting an overly favorable view of its financial health. By relying on non-GAAP measures, MAA presented adjusted financial metrics obscuring actual financial

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 50 of 121 PageID 1927

performance. These adjustments included reclassifying expenses and inflating casualty losses to present better-than-actual results. Using non-GAAP measures allowed MAA to report higher earnings before interest, taxes, depreciation, and amortization (EBITDA), misleading investors and stakeholders about the company's profitability. The consistent misuse of non-GAAP measures violates the principles of transparency and accuracy mandated by the Sarbanes-Oxley Act. These practices undermine investor confidence and distort the financial statements, challenging company performance assessment. Non-GAAP measures were used selectively to exclude significant expenses, such as routine maintenance costs, which should have been part of the operational costs, thereby inflating profit margins and misrepresenting the company's financial health.

• Lack of Response and Accountability: Despite my continuous efforts to highlight these issues, MAA dismissed my concerns and failed to take corrective actions. My emails to Glenn Russell, the SVP of Internal Audit, were met with inadequate responses. The persistent dismissal of valid concerns reflects a broader corporate governance and accountability issue at MAA. The lack of a thorough investigation and failure to address the documented fraudulent practices highlight a disregard for regulatory compliance and ethical standards. The fraudulent practices at MAA have significant implications for investors, regulators, and other stakeholders. Misleading financial statements erode trust and can lead to severe monetary and legal consequences for the company. Accurate financial reporting is crucial for making informed investment decisions, and MAA's ongoing fraudulent practices compromise the reliability of their financial disclosures.

In conclusion, my whistleblower complaint detailed a systematic pattern of fraudulent accounting practices at MAA, supported by extensive documentary evidence. Despite my efforts to highlight these issues and seek corrective action, MAA's dismissive response underscores the need for regulatory intervention to ensure accountability and compliance with financial reporting standards.

### Document 106 Filed 06/24/24 Page 51 of 121 PageID 1928

### • Harassment and Retaliation:

In addition to the accounting fraud, I reported ongoing harassment and retaliation within the company. I documented numerous instances where I was subjected to demeaning comments and harassment by my direct supervisor, Jay Blackman, and other colleagues. These incidents reflect a broader pattern of discrimination and retaliation against employees, particularly those belonging to marginalized groups.

- Personal Harassment: Jay Blackman made derogatory comments about my appearance and mental health, sending "Waterboy" memes that mocked my mental capacity despite knowing about my documented mental health issues from 2019. This ongoing harassment created a hostile work environment and significantly impacted my well-being. I provided extensive documentation to substantiate these claims, including screenshots of inappropriate messages and emails. Despite this, MAA's internal investigations were inadequate, failing to interview key witnesses or take meaningful action.
- Discrimination Against Black Employees: As a witness to several discriminatory practices at MAA, I have observed and reported significant disparities in how disciplinary actions and policies were applied, particularly against black employees compared to their white counterparts. For example, a disturbing incident involved a white employee who verbally abused a black leasing consultant, referring to her as a "nappy-headed hoe." This grievous racial harassment was met with minimal action; the employee was merely written up and later transferred to another property following an anonymous complaint to the CEO. In my view, and alignment with basic ethical standards, this employee should have been terminated immediately.

Moreover, there were multiple instances where black employees were terminated under questionable circumstances, such as falling off a ladder or disclosing mental health challenges, including cases involving a property manager and a housekeeper. These actions suggest a pattern of harsher penalties applied disproportionately to black employees.

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 52 of 121 PageID 1929

Additionally, disparities were evident in the rental increase policies for employees residing at MAA properties, which initially seemed more favorable to white than black employees. Although MAA eventually revised its rental increase policy after these issues were brought to light, the changes appeared superficial and reactive, intended more to cover up previous criticisms than to address the root causes of discrimination genuinely.

Such practices not only raise ethical concerns but also constitute violations of Title VII of the Civil Rights Act of 1964, which explicitly prohibits employment discrimination based on race, color, religion, sex, or national origin. The consistent alteration of policies following exposure to unfair practices suggests a systematic effort to mask more profound issues of racial discrimination rather than transparently addressing and correcting these injustices. This behavior undermines the principles of fairness and equality that are supposed to guide corporate conduct and necessitate urgent and thorough investigation to ensure compliance with federal anti-discrimination laws.

- Forced Retirement and Discriminatory Practices: Older employees were pressured to retire because they earned higher salaries, and Black employees were targeted simply because certain managers did not like them. This practice of forcing employees out based on age or race highlights the systemic discrimination within MAA. The Age Discrimination in Employment Act (ADEA) of 1967 prohibits employment discrimination against persons 40 or older. Moreover, employees were coerced into providing personal reasons for having an emotional support animal, such as disclosing their disability to other employees and their superiors. Once again, this policy was changed only after complaints were raised, demonstrating MAA's tendency to modify policies superficially while hiding the truth about their discriminatory practices. This contravenes the Americans with Disabilities Act (ADA), which prohibits discrimination against individuals with disabilities in all areas of public life.
- Lack of Diversity in Leadership: MAA's predominantly white board and executive team composition starkly illustrates a significant lack of diversity at the highest levels of the company's leadership. This

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 53 of 121 PageID 1930

homogeneity in leadership not only underscores a failure to reflect the diversity of the workforce and customer base but also contributes to an organizational culture that may not be fully inclusive or attuned to the needs and concerns of all employees.

The absence of diverse perspectives in crucial decision-making roles can perpetuate systemic discrimination and unintentional biases within the company. Numerous studies have documented that diverse leadership teams are a marker of fairness and equality and drive superior business outcomes. These teams are shown to make more comprehensive and effective decisions, foster innovation, and facilitate more inclusive workplace policies. Conversely, a lack of diversity at the top can lead to a narrow viewpoint on critical issues, potentially overlooking or undervaluing the impact of decisions on different demographic groups within the company.

Furthermore, diverse leadership is crucial for modeling the importance of inclusivity throughout the organization. It sends a strong message to all employees about the company's commitment to equality and respect, which are essential for maintaining a positive and productive work environment. The absence of this diversity in MAA's leadership is not just a missed opportunity for enhanced decision-making and innovation but also likely contributes to the continuation of discriminatory practices and the insufficient handling of harassment issues that I have previously reported.

Extensive Documentation Provided: I provided numerous other documents, calls, and information to
various regulatory agencies, including the SEC, FTC, IRS, DOJ, and more. This extensive documentation
included emails, internal communications, and recordings of phone calls that detailed the harassment,
discrimination, and retaliation I experienced. Despite the overwhelming evidence, MAA's internal
investigations were consistently inadequate, failing to hold the perpetrators accountable or implement
meaningful changes.

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 54 of 121 PageID 1931

The persistent harassment and retaliation I faced, along with the discriminatory practices against Black employees and older workers, reflect a deeply ingrained culture of bias and unfair treatment within MAA. This culture not only violates federal laws and regulations but also undermines the rights and dignity of the employees. The company's tendency to change policies only after issues are brought to light, without addressing the root causes, highlights their reluctance to improve their work environment and protect their employees genuinely.

 Legal Framework and Case Law: The Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act all provide robust protections against the types of discrimination and retaliation I have documented. Case law such as Burlington Northern & Santa Fe Railway Co. v. White (548 U.S. 53, 2006) underscores the importance of protecting employees from retaliation, establishing that any action that might dissuade a reasonable worker from making or supporting a charge of discrimination is unlawful. Faragher v. City of Boca Raton (524 U.S. 775, 1998) and Ellerth v. Burlington Industries, Inc. (524 U.S. 742, 1998) further establish employer liability for supervisory harassment under Title VII.

The harassment, discrimination, and retaliation I reported are part of a broader pattern of unethical and illegal practices at MAA. The extensive evidence provided to regulatory agencies underscores the urgent need for intervention to address these severe violations and ensure a fair and just workplace. MAA's persistent failure to address these issues, coupled with its predominantly white leadership, highlights the need for significant changes in its corporate culture and governance to protect the rights and dignity of all employees.

#### Document 106 Filed 06/24/24 Page 55 of 121 PageID 1932

### 2024 Whistleblower Complaints and Reiterations

In 2024, I continued to report unethical and illegal activities within MAA, leading to significant whistleblower complaints filed in June 2024. My comprehensive complaint outlined a series of retaliatory actions taken against me by MAA executives and outside counsel. These actions included attempts to undermine my credibility and retaliate against me for my whistleblowing efforts.

#### **Detailed Allegations and Evidence:**

1. Retaliation by Executives and Counsel: Senior executives and board members, including Tamara Fischer, Edith Kelly-Green, James K. Lowder, Thomas H. Lowder, Claude B. Nielsen, William Reid Sanders, Gary S. Shorb, and David P. Stockert, along with MAA executives H. Eric Bolton Jr. (Chairman and Chief Executive Officer), A. Bradley Hill (President and Chief Investment Officer), Timothy P. Argo (Executive Vice President and Chief Strategy & Analysis Officer), Melanie M. Carpenter (Executive Vice President and Chief Human Resources Officer), Robert J. DelPriore (Executive Vice President, Chief Administrative Officer and General Counsel), Amber Fairbanks (Executive Vice President, Property Management), Joseph P. Fracchia (Executive Vice President, Chief Technology & Innovation Officer), A. Clay Holder (Executive Vice President, Chief Financial Officer), David C. Ward (Executive Vice President, Investments), Leslie B.C. Wolfgang (Senior Vice President, Chief Ethics & Compliance Officer, and Corporate Secretary), Indrid Agaj (Senior Vice President, Director of New Construction), Scott Andress, Eugenia McGown, Jay Blackman (Regional Vice President), as well as MAA outside counsel Paige Mills, John Gowen, Jordan Thomas, Michael Kappallas, and other court employees, engaged in retaliatory actions against me. These actions included pursuing baseless judgments and filing false claims; all intended to silence my whistleblowing activities and intimidate me into withdrawing my complaints. Given the coordinated nature of these actions, I can only assume that these individuals retaliated against me. Despite the overwhelming evidence I provided, MAA and its executives continued to undermine my credibility and professional standing. These actions included spreading false information about my professional conduct,

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 56 of 121 PageID 1933

making baseless accusations of misconduct, and manipulating legal processes to create undue burdens. This relentless campaign of retaliation is a clear violation of federal whistleblower protection laws, including those outlined in the Dodd-Frank Act and the Sarbanes-Oxley Act.

The Dodd-Frank Act provides robust protections for whistleblowers, prohibiting any form of retaliation against employees who lawfully disclose information about fraudulent or unethical practices. Similarly, the Sarbanes-Oxley Act mandates strict penalties for companies and individuals retaliating against whistleblowers. The actions taken by MAA's senior executives and their legal counsel contravene these protections and underscore the need for rigorous enforcement of these laws to ensure corporate accountability and protect whistleblowers from retaliatory actions.

2. Systemic Fraud and Illicit Activities: I exposed a long-term scheme involving creating numerous shell companies or "subsidiaries" by MAA executives, designed to facilitate antitrust violations, securities fraud, and extensive business fraud. This complex scheme was meticulously documented and reported to various government entities, including the SEC, FTC, IRS, and DOJ. Key evidence, such as emails and internal memos, detailed the orchestration of these illicit activities, showing how these subsidiaries were strategically used to manipulate financial statements and evade regulatory scrutiny. Such practices not only violate provisions of the Federal Securities Laws, particularly under the Securities Exchange Act of 1934 (Sections 10(b) and 15(d)), but also contradict the Internal Revenue Code and antitrust laws by disguising actual financial conditions and market operations.

The recent enactment of the Corporate Transparency Act, which aims to curb the misuse of shell entities by enhancing the disclosure requirements for these subsidiaries, raises questions about how MAA will continue to obscure the existence of certain subsidiaries that sporadically disappear from financials only to reappear years later. This pattern of obfuscation is particularly concerning in light of the recent retirements of key executives such as the COO and CFO, which may suggest an anticipation of increased regulatory scrutiny or fear of exposure to legal repercussions. This ongoing manipulation of subsidiary visibility challenges the integrity of financial disclosures and poses significant risks to investors and stakeholders relying on transparent and accurate corporate financial reporting. Regulatory bodies must intensify their scrutiny of MAA's practices to ensure compliance with new transparency standards and to safeguard the financial markets from such deceptive practices.

**3.** Antitrust Violations: MAA's use of software platforms to manipulate rental prices in collaboration with competitors constituted price-fixing under the Sherman Antitrust Act. My documentation included detailed descriptions of how MAA and RealPage conspired to fix rental prices, violating federal antitrust laws. This practice directly contravenes landmark antitrust cases such as **United States v. Socony-Vacuum Oil Co.**, 310 U.S. 150 (1940), which established the illegality of price-fixing agreements among competitors. I provided extensive evidence, including emails, market surveys with competitors, documents shared among competitors, and Excel documents that showed systematic price-fixing activities. Additionally, I included recordings of phone calls, pricing calls, and amenity review calls that further substantiated these antitrust violations.

**United States v. Andreas et al. (1999)** In this landmark case, top executives at Archer Daniels Midland (ADM) were convicted for their roles in a price-fixing conspiracy related to lysine, an essential animal feed additive. An executive from ADM provided crucial evidence by secretly collaborating with the Department of Justice, which proved pivotal in the convictions. **Outcome:** Three senior executives, including the vice president, were sentenced to prison, highlighting the severe legal consequences of engaging in price-fixing activities.

**United States v. AU Optronics Corporation et al. (2012)** Executives from several LCD (Liquid Crystal Display) manufacturers were found guilty of conspiring to fix the prices of LCD panels, affecting the global market. **Outcome:** Two top executives received three-year prison sentences, and the corporation was fined \$500 million, underscoring the substantial penalties for corporate and executive involvement in price-fixing.

**United States v. Norris (2011)** Ian Norris, former CEO of Morgan Crucible, faced charges for obstructing justice related to a price-fixing investigation. **Outcome:** Norris was extradited from the UK to the U.S., highlighting the

seriousness of obstructing justice in antitrust cases.

**United States v. Taubman (2002)** A. Alfred Taubman, former chairman of Sotheby's, colluded with Christie's to fix commission prices at art auctions, affecting high-end art market economics. **Outcome:** Taubman received a conviction and served ten months in prison, demonstrating that antitrust laws span various industries, including luxury and art.

**United States v. Fastow (2004)**: Andrew Fastow, Enron's CFO, was implicated in multiple charges related to the Enron scandal, including conspiracy to commit securities fraud. Though not strictly an antitrust case, it illustrates the range of illegal activities associated with executive actions. **Outcome:** Fastow was sentenced to six years after a plea deal, a stark reminder of the repercussions for executives involved in financial misconduct.

**United States v. Joseph Giraudo et al. (2019)** This case involved a conspiracy among real estate investors to rig bids at public foreclosure auctions. **Outcome:** Joseph Giraudo and several co-conspirators were sentenced to pay significant fines and faced community confinement, emphasizing the illegality of manipulating auction processes.

### United States v. Bumble Bee Foods LLC et al. (2017)

In this case, executives from major canned tuna companies, including Bumble Bee Foods, StarKist, and others, were found guilty of conspiring to fix the prices of canned tuna, a staple product affecting millions of consumers. The Department of Justice uncovered this conspiracy through an extensive investigation, which included covert recordings made by an executive who decided to cooperate with federal investigators.

**Outcome:** Bumble Bee Foods agreed to plead guilty to price-fixing charges and was fined \$25 million. The fine was reduced from a potential \$81.5 million due to the company's prompt cooperation with the investigation and fears of bankruptcy that a more significant fine might induce. Several executives were indicted and faced

criminal charges, with Bumble Bee's former CEO, Christopher Lischewski, sentenced to 40 months in prison and fined \$100,000 for his role in the conspiracy. This case is a stark reminder of the severe legal repercussions individuals and companies can face when involved in anti-competitive practices.

**4. Civil and Disability Rights Violations:** I reported severe civil rights violations and breaches of disability rights within MAA's employee relations and human resources departments. These included discriminatory hiring practices and the mistreatment of employees with disabilities. My complaints highlighted systemic issues that reflected a broader pattern of exploitative practices. For instance, Black employees were unjustly fired for minor infractions, such as falling off a ladder or having mental health issues, while white employees received more favorable treatment. Furthermore, older employees were asked to retire due to their higher salaries, and employees were coerced into disclosing their disabilities when requesting emotional support animals. These actions violate the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964.

I meticulously documented these issues throughout my tenure at MAA, providing a comprehensive account of the unethical and illegal activities I witnessed. My actions as a whistleblower were guided by a commitment to uphold the principles of fair competition, transparency, and corporate integrity. Despite facing significant retaliation, I remained steadfast in exposing wrongdoing and seeking accountability.

**Extensive Documentation and Evidence Provided:** I provided numerous other documents, calls, and information to regulatory agencies, including the SEC, FTC, IRS, DOJ, and more. This extensive documentation included emails, internal communications, and phone call recordings that detailed the harassment, discrimination, and retaliation I experienced. Despite the overwhelming evidence, MAA's internal investigations were consistently inadequate, failing to hold the perpetrators accountable or implement meaningful changes.

These complaints underscore the necessity for rigorous enforcement of federal laws protecting whistleblowers and ensuring corporate accountability. The detailed evidence and persistent efforts to bring these issues to

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 60 of 121 PageID 1937 light highlight the critical role of whistleblowers in maintaining the integrity of our financial and corporate systems. The importance of upholding whistleblower protections is further emphasized by landmark cases such as **Digital Realty Trust, Inc. v. Somers**, which clarified the scope of whistleblower protections under the

Dodd-Frank Act, and Halliburton Co. v. Erica P. John Fund, Inc., which reaffirmed the importance of accurate corporate disclosures in securities fraud cases.

In conclusion, the retaliation and unethical practices I exposed at MAA highlight a deeply ingrained culture of misconduct that requires immediate regulatory intervention. My comprehensive documentation and continued advocacy for transparency and integrity serve as a testament to the crucial role of whistleblowers in promoting corporate accountability and

### 3.5 Legal Precedents Supporting Whistleblower Claims

### Introduction

Whistleblower protections ensure that individuals can report unethical or illegal activities without fear of retaliation. Legal precedents establish and reinforce these protections, providing a foundation for claims against retaliatory actions. The following cases highlight key rulings that support the protections afforded to whistleblowers and emphasize the consequences of retaliatory behavior by employers.

### Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006)

In Burlington Northern & Santa Fe Railway Co. v. White, the Supreme Court interpreted the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964 to encompass a broad range of employer actions that could dissuade a reasonable worker from making or supporting a charge of discrimination. The Court ruled that retaliatory actions are not limited to workplace-related or employment-related actions. This precedent is crucial in the context of MAA's actions against me, as it underscores that retaliation can take many forms, including baseless legal claims, harassment through subpoenas, and other intimidating actions. The ruling in Burlington Northern highlights the need for broad protections to ensure whistleblowers can report misconduct without fear of pervasive retaliation.

### Digital Realty Trust, Inc. v. Somers, 138 S. Ct. 767 (2018)

The Supreme Court in Digital Realty Trust, Inc. v. Somers clarified that the anti-retaliation provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act apply specifically to individuals who report violations directly to the SEC. This ruling underscores the importance of formal reporting channels in securing protection against retaliation. My actions, which involved reporting violations to the SEC and the IRS, fall squarely within the protections outlined by the Dodd-Frank Act. MAA's retaliatory actions, such as issuing subpoenas for my email and financial records without proper grounds, violate these protections. This case affirms that my whistleblower activities are legally protected and that the retaliatory measures taken by MAA are unlawful.

### Halliburton, Inc. v. Admin. Review Bd., 771 F.3d 254 (5th Cir. 2014)

In Halliburton, Inc. v. Admin. Review Bd., the Fifth Circuit reinforced the robust protections under the Sarbanes-Oxley Act (SOX) for whistleblowers who report corporate misconduct. The court ruled in favor of a whistleblower who faced retaliation after reporting accounting irregularities. This case is directly relevant to my situation, as I reported financial misconduct and unethical practices at MAA, leading to retaliatory actions against me. The comprehensive remedies available under SOX, including reinstatement, back pay, and compensatory damages, highlight the legal protections that support my claims. The ruling in Halliburton underscores the necessity for immediate judicial intervention to address the retaliation I have faced and enforce the protections that SOX guaranteed.

### Macktal v. Secretary of Labor, 923 F.2d 1150 (5th Cir. 1991)

Macktal v. Secretary of Labor established strong protections for whistleblowers under the False Claims Act (FCA). The court upheld the rights of a whistleblower who faced retaliation for exposing fraudulent activities,

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 62 of 121 PageID 1939

emphasizing the availability of robust remedies such as reinstatement and compensatory damages. This case illustrates the judiciary's commitment to protecting whistleblowers from retaliatory actions. The parallels between this case and my experiences with MAA's retaliatory actions, including baseless legal claims and persistent harassment, highlight the applicability of the FCA's protections to my situation. The ruling in Macktal reinforces the need for judicial recognition of the retaliation I have endured and the necessity of enforcing the legal protections afforded to whistleblowers.

#### Friedman v. S3 Group Ltd., 580 F. Supp. 3d 618 (D. Mass. 2022)

In Friedman v. S3 Group Ltd., the court ruled in favor of a whistleblower who reported fraudulent activities and subsequently faced retaliation. This case reinforces the importance of legal protections for individuals who expose corporate misconduct. The court's decision in Friedman underscores the necessity of upholding whistleblower protections to maintain corporate accountability and integrity. The retaliatory actions taken by MAA against me, including the dissemination of false claims about my sexual orientation and persistent harassment, directly contradict the principles established in this case. The legal precedents outlined in Friedman provide a solid basis for my claims and demand immediate judicial intervention to prevent further retaliation and ensure a fair trial.

These legal precedents affirm the legal framework protecting whistleblowers from retaliation and provide a robust basis for seeking remedies against MAA for its retaliatory actions. MAA's retaliatory and harassing actions against me in response to my whistleblower activities directly violate established whistleblower protection laws and legal standards. This motion highlights these violations, demanding immediate judgment to halt further misconduct and pave the way for a fair and impartial resolution in a higher court.

#### 4. Court's Biased Treatment and Abuse of Power

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 63 of 121 PageID 1940

Throughout the legal proceedings involving my whistleblower complaints, I experienced numerous due process violations. These violations were characterized by the court's biased treatment and abuse of power, severely undermining the judicial process's fairness. Due process, a fundamental constitutional right guaranteed by the Fifth and Fourteenth Amendments, ensures fair treatment through the regular judicial system, especially as a citizen's entitlement. The right to due process encompasses both procedural and substantive aspects, requiring the government to follow fair procedures and ensuring that laws do not infringe upon fundamental rights without sufficient justification.

In my case, these principles were starkly contradicted by the court's actions. From the outset, the legal proceedings were marred by procedural irregularities that compromised the integrity of the judicial process. One of the most glaring violations occurred with the issuance of subpoenas that lacked proper evidence or justification, placing undue burdens on me. For instance, a subpoena issued on April 3rd failed to list my known email addresses and was later amended based on unverified assumptions about the inactivity of my email accounts. This action demonstrated a lack of diligence in the court's procedures and highlighted a prejudicial approach that initially disadvantaged me.

Moreover, during a critical conference call with the judge on September 11th, I voiced my concerns regarding the procedural fairness of the case. My concerns were summarily dismissed despite raising valid issues about the handling of evidence and the court's approach to the case. This pattern of ignoring or dismissing my attempts to address due process violations became a recurring theme throughout the proceedings, further exacerbating the situation and eroding my faith in the judicial system.

The involvement of Michael Kapellas, a judicial law clerk with prior associations with the opposing counsel's firm, added another layer of bias and conflict of interest. Kapellas had previously worked for Bass Berry & Sims PLC, the firm representing MAA. His role in authoring several orders in the case without disclosing this conflict of interest until much later severely compromised the impartiality of the judicial process. Federal Rule of Civil Procedure 28 mandates a judge's disqualification in any proceeding where their impartiality might reasonably

be questioned, yet this rule was blatantly ignored in my case. Additionally, Canon 3 of the Code of Conduct for United States Judges emphasizes the requirement for judicial impartiality and independence, which was breached by Kapellas's involvement.

Further, due process violations included the court's mishandling of evidence and failing to consider the critical documentation I provided. Despite submitting substantial evidence, including emails, internal documents, and recordings that substantiated my claims of misconduct and bias, the court consistently failed to give this evidence the consideration it deserved. This disregard for crucial evidence hindered my ability to present a robust defense and suggested a deliberate effort to disadvantage me at every turn.

These actions collectively created a prejudiced and unjust legal environment where my rights to a fair trial were systematically undermined. The lack of impartiality and the abuse of judicial power violated my constitutional rights and highlighted systemic issues within the judicial process handling my case. My repeated attempts to address these due process violations were consistently ignored or dismissed, further exacerbating the situation and eroding my faith in the judicial system.

The principles of due process, as articulated in landmark Supreme Court cases such as Goldberg v. Kelly, 397 U.S. 254 (1970) and Matthews v. Eldridge, 424 U.S. 319 (1976), emphasize the necessity for fair procedures and impartial adjudication. In Goldberg v. Kelly, the Court held that due process requires an opportunity to be heard at a meaningful time and in a meaningful manner, which was not afforded to me in these proceedings. Matthews v. Eldridge further established a balancing test to determine the specific dictates of due process, which includes considering the private interest affected, the risk of erroneous deprivation through the procedures used, and the government's interest. In my case, the significant private interest at stake and the high risk of erroneous deprivation due to biased procedures were ignored, contrary to the principles established in these cases. In conclusion, the court's biased treatment and abuse of power in my whistleblower case reveal significant flaws in the judicial process. Due process violations, instances of judicial misconduct, conflicts of interest, and relevant case law on judicial bias underscore the need for rigorous judicial impartiality and fairness enforcement to ensure justice for all parties involved. The repeated and systematic nature of these violations highlights the urgent need for reforms to prevent such abuses of power and protect the judicial system's integrity.

### **4.2 Instances of Judicial Misconduct**

In my case, specific instances of judicial misconduct included the issuance of subpoenas without proper evidence or justification, which placed undue burdens on me. For example, on April 3rd, a subpoena was issued that failed to list my known email addresses and was later amended based on unverified assumptions about the inactivity of my email accounts. This premature and unjustified assertion of my involvement in the alleged trademark infringement case could be contested under Federal Rule of Civil Procedure 11, which requires factual validation for claims made in filings.

Moreover, during a conference call with the judge on September 11th, I voiced my concerns regarding the procedural fairness of the case. It wasn't until November that I discovered Michael Kapellas, previously employed by the same firm as opposing counsel Paige Mills, had authored several orders in the case, raising significant concerns of bias and impartiality. The biased nature of these orders, where Kapellas presumably favored his former firm, raises issues related to Federal Rule of Civil Procedure 28 and Canon 3 of the Code of Conduct for United States Judges concerning the requirement for judicial impartiality and independence, as highlighted in Liteky v. United States, which discusses the grounds for disqualifying a judge for apparent bias.

Additionally, numerous procedural irregularities, such as the improper handling of evidence and the failure to consider critical documentation I provided, further underscored the lack of impartiality in the proceedings. For instance, vital pieces of evidence I submitted were either ignored or improperly evaluated, leading to a skewed

suggested a deliberate effort to disadvantage me at every turn. This ongoing pattern of misconduct significantly impaired my ability to receive a fair trial, violating the fundamental principles of justice and due process.

### 4.3 Conflict of Interest Involving Judicial Law Clerk

The involvement of Michael Kapellas, a judicial law clerk who had previously worked for Bass Berry & Sims PLC, the same firm representing MAA, presented an apparent conflict of interest. This situation compromised the integrity of the judicial process. It violated the Federal Rule of Civil Procedure 28, which mandates a judge's disqualification in any proceeding where their impartiality might reasonably be questioned. Additionally, Canon 3 of the Code of Conduct for United States Judges emphasizes the requirement for judicial impartiality and independence, which were breached in my case. The biased nature of the orders issued by Kapellas, which appeared to favor his former firm, suggests undue influence and raises concerns about the fairness of the legal proceedings. This conflict of interest was not disclosed promptly, preventing me from raising objections earlier.

Further complicating the situation, Kapellas continued to issue biased orders and motions against me, effectively prejudging the case during the discovery phase. Without complete evidence, this premature judgment suggests a breach of Federal Rule of Civil Procedure 56, which governs summary judgment and requires a full factual record before ruling on the case's merits. If proven, the suspicion of ex parte communications with the judge or judicial law clerk would contravene Federal Rule of Civil Procedure 23(b) and the principles established in *In re School Asbestos Litigation*, 977 F.2d 764 (3d Cir. 1992), which strictly prohibit such communications to ensure transparency and fairness in judicial proceedings (Exhibit D).

### 4.4 Relevant Case Law on Judicial Bias

Several landmark cases highlight the importance of judicial impartiality and the severe implications of bias in the judiciary. In Liteky v. United States, 510 U.S. 540 (1994), the Supreme Court discussed the grounds for

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 67 of 121 PageID 1944

disqualifying a judge for apparent bias, emphasizing that a judge's impartiality must be beyond reproach. Similarly, In re Murchison, 349 U.S. 133 (1955) underscored the necessity for an impartial tribunal, stating that "a fair trial in a fair tribunal is a basic requirement of due process." The principle established in Tumey v. Ohio, 273 U.S. 510 (1927) that any tribunal permitted by law to try cases must be impartial was blatantly disregarded in my case. The involvement of a judicial law clerk with prior associations with the opposing counsel's firm and the issuance of biased orders demonstrate a clear violation of these judicial principles.

These factors resulted in a legal environment where my ability to defend myself was significantly compromised. The lack of impartiality and the abuse of judicial power violated my constitutional rights and highlighted systemic issues within the judicial process handling my case. Transparency, fairness, and adherence to due process are paramount in maintaining the judicial system's integrity. In my case, the violations underscore the critical need for reforms to prevent such abuses of power.

#### 4.5 Additional Evidence and Detailed Incidents

I provided substantial evidence to a range of authorities, including the Circuit Executive, Judicial Board, Board of Professional Responsibility, and other government agencies, to substantiate my claims of judicial misconduct and bias. This evidence consisted of numerous emails, documents, and other information. Despite the extensive and compelling nature of the evidence presented, these bodies have not taken action thus far. The court, in particular, has consistently ignored or dismissed this evidence, further undermining the fairness of the proceedings.

Specific incidents have exemplified the court's abuse of power. For instance, on March 19th, Judge Lipman, with Michael Kapellas acting as the Judicial Law Clerk, threatened to hold me in contempt and issue a warrant for my arrest by April 15th. This threat was made despite the clear evidence of procedural irregularities and potential bias presented to the court, highlighting a concerning disregard for judicial accountability and transparency.

### 5. Violation of Civil Rights

### 5.1 Overview of Civil Rights in the Legal Process

Civil rights in the legal process are designed to ensure that all individuals receive fair and equal treatment under the law. These rights are enshrined in the U.S. Constitution, federal statutes, and various state laws, and they are intended to protect individuals from discrimination, bias, and unjust treatment within the judicial system. Key protections include:

- Due Process Clause (5th and 14th Amendments): The Due Process Clauses of the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty, or property without due process of law. This includes the right to a fair trial, the right to be heard, and the right to a neutral and unbiased tribunal. It also encompasses the right to receive proper notice and a meaningful opportunity to be heard.
- Equal Protection Clause (14th Amendment): The Equal Protection Clause requires that the law treats individuals in similar situations equally. It prohibits discrimination based on race, gender, religion, or other protected characteristics. This clause ensures that no individual is unjustly favored or disadvantaged by the legal system.
- Civil Rights Act of 1964 (Title VII): Title VII prohibits discrimination in various aspects, including
  employment and public accommodations, based on race, color, religion, sex, or national origin. It also
  includes protections against retaliation for asserting one's rights under the Act, ensuring that
  individuals can report discrimination without fear of adverse consequences.
- Americans with Disabilities Act (ADA): The ADA prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places open to the general public. It ensures that individuals with disabilities receive reasonable

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 69 of 121 PageID 1946 accommodations to participate fully in legal processes and prohibits retaliation against individuals for asserting their rights under the ADA.

- Section 1983 (42 U.S.C. § 1983): This federal statute allows individuals to sue in federal court when they believe their constitutional rights have been violated by someone acting under the color of state law. This includes violations of due process and equal protection rights, ensuring that state actors are held accountable for unconstitutional actions.
- Fair Housing Act and Violation of Privacy Rights: This act The Fair Housing Act mandates protections
  against discrimination based on race, color, religion, sex, familial status, national origin, and disability. It
  specifically requires that reasonable accommodations be made for individuals with disabilities to
  ensure equal access to housing and related services. My submission of a letter to the property
  management company, MAA, in 2019 was intended to secure an accommodation for an emotional
  support animal, for which the associated fee was appropriately waived.

However, the requirement to provide such sensitive personal information to my employer, MAA, and its subsequent misuse raises significant legal and ethical concerns. This practice potentially violates privacy protections under the Americans with Disabilities Act (ADA), which ensures the confidentiality of medical information and restricts employers from disclosing such information. Moreover, the repeated use of this letter to portray me as "obsessed and unhinged" likely constitutes a violation of both the Fair Housing Act and the ADA, as it involves the misuse of medical information for discriminatory and retaliatory purposes.

Legal precedent, such as in the case of *McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)*, establishes the framework for proving discrimination and requires employers to maintain the confidentiality of employee medical details. MAA's misuse of my personal medical information not only undermines my privacy rights but also contradicts the intended protections of these federal statutes,

### 5.2 Specific Civil Rights Violations by the Court

Throughout the proceedings in this case, there have been multiple violations of my civil rights by the court and the legal process, including but not limited to:

- Bias and Judicial Misconduct: There have been significant instances of judicial bias and misconduct, including improper relationships between the judicial law clerk and the attorneys at Bass Berry & Sims PLC, leading to biased rulings against me. This violates my right to a fair and impartial tribunal as guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments. The failure to disclose these conflicts of interest undermines the integrity of the judicial process and raises questions about the court's impartiality.
- Ignoring Reasonable Accommodations: Despite my diagnosed anxiety, depression, and the challenges stemming from my educational background as a high school dropout at age 15, which affects my ability to comprehend complex legal proceedings, the court has consistently ignored my requests for reasonable accommodations. This neglect has significantly impacted my ability to participate in and understand my defense effectively. The court's failure to even inquire again about my need for accommodations after initially dismissing them not only exacerbates my condition but also impairs my legal rights. This action, or lack thereof, clearly violates the Americans with Disabilities Act (ADA), which mandates that individuals with disabilities must be provided with the necessary accommodations to ensure their full participation in legal processes.

Moreover, case law such as Tennessee v. Lane, 541 U.S. 509 (2004) reinforces the necessity of such accommodations. In this landmark decision, the Supreme Court highlighted the importance of ensuring

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 71 of 121 PageID 1948

that individuals with disabilities receive the accommodations they require to access judicial services fully. The ruling emphasizes that failing to make such accommodations can violate an individual's rights under the ADA.

The refusal to accommodate my specific needs has not only exacerbated my mental health conditions. Still, it has also impaired my ability to mount an effective defense, diminishing my rights to a fair trial as protected under the law. This denial of reasonable accommodations undermines the justice system's integrity, highlighting a need for immediate judicial intervention to ensure compliance with ADA mandates and to safeguard the rights of individuals with disabilities in legal settings.

Failure to Provide Proper Notice and Due Process: MAA and the court have consistently failed to
adhere to procedural norms by sending improper notices and failing to utilize certified mail for critical
documents. On numerous occasions, documents were neither mailed to the correct addresses nor sent
via email as requested, failing to notify me properly. These actions seem strategically designed to
confuse and prevent me from responding in a timely manner, effectively undermining my ability to
defend myself and participate meaningfully in the proceedings.

This pattern of behavior is a clear violation of my due process rights as enshrined in the Fifth and Fourteenth Amendments, which assure every individual the right to a fair legal process. These amendments dictate that no person shall be deprived of life, liberty, or property without due process of law, which includes the fundamental right to be notified appropriately of legal actions and a reasonable opportunity to prepare a defense.

Moreover, my requests for all communications to be mailed and emailed—due to my inability to access PACER—were consistently ignored. This disregard for my clearly stated need for appropriate communication methods violates fundamental procedural fairness and contradicts the principles in cases such as *Jones v. Flowers*, 547 U.S. 220 (2006). In this ruling, the Supreme Court emphasized that

# Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 72 of 121 PageID 1949

reasonable efforts must be made to provide notice by means one desiring to inform might reasonably adopt to reach the intended recipient.

The failure to provide adequate notice in my case has deprived me of the opportunity to prepare and has impeded my right to a fair trial. This lack of procedural integrity calls for immediate judicial review to correct these oversights and ensure my rights are fully protected under the law.

Lack of Access to Proper Forms and Resources: Throughout the judicial process, I encountered significant barriers in accessing the necessary legal forms, reasonable accommodations, information about local rules, and clarification on ethical standards required to present my case adequately. This lack of access directly violates due process as guaranteed by the Fifth and Fourteenth Amendments. The denial of essential resources severely hindered my ability to participate in the judicial process effectively. The court's failure to provide or facilitate access to these resources constitutes a procedural irregularity that undermines the fairness and integrity of the judicial proceedings.

Under Tennessee law, Rule 5.02 of the Tennessee Rules of Civil Procedure mandates that the court clerk provide necessary forms to parties involved in litigation. The continuous failure to provide these forms despite multiple requests represents a clear violation of this rule, further exacerbating the procedural disadvantages I faced throughout the case. Additionally, Tennessee Supreme Court Rule 10B, Section 2.11, requires that court personnel assist litigants in accessing procedural forms and ensuring they have the necessary documentation to proceed with their cases.

Despite numerous attempts to obtain these forms and other necessary accommodations, I was repeatedly directed to the court's website and informed that court staff could not provide legal advice. However, my inquiries were not requests for legal advice but clarifications on procedural matters, ethical standards, and local rules. At the time of beginning the trial, the local laws were significantly

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 73 of 121 PageID 1950

outdated. They had not been updated for some time, adding to the confusion and difficulty in understanding the correct procedures.

I also sought information about resources for legal assistance and reasonable accommodations due to documented mental health issues, as provided for under the Americans with Disabilities Act (ADA). The court's refusal to provide this information or to clarify existing procedural requirements created additional barriers to my participation in the trial. Tennessee Code Annotated § 20-12-101 emphasizes the importance of fair access to the courts, mandating that all litigants be provided with the necessary resources and assistance to ensure equitable participation in legal proceedings.

The consistent redirection to the website and the staff's refusal to assist in a non-advisory capacity severely hampered my ability to navigate the judicial process effectively. This lack of support and failure to update local rules further contributed to a prejudiced and unjust legal environment.

In summary, the lack of access to proper forms, reasonable accommodations, and clear procedural information, combined with the court's misinterpretation of my requests for procedural clarifications, underscores a significant breach of both state and federal procedural mandates. This breach profoundly impacted my ability to participate effectively in my defense, highlighting the urgent need for reforms to ensure that litigants are provided with the necessary resources and support to engage fully in the judicial process.

Unauthorized Subpoenaing and Intrusive Discovery: The court permitted MAA's attorneys to issue subpoenas for my personal email addresses and financial records without establishing legitimate grounds, in direct violation of Rule 45 of the Federal Rules of Civil Procedure, which governs the issuance and scope of subpoenas to ensure they are used judiciously and not for undue harassment. This rule explicitly requires that subpoenas be used to obtain only relevant and specific information

necessary for the case. It mandates that they must not impose an undue burden on the persons subject to them.

The barrage of subpoenas, sent directly to me and bypassed formal presentation to the court, exemplifies an abuse of the legal discovery process. This strategy appears designed to harass and intimidate, undermining my ability to mount an effective defense and infringing upon my civil rights. Despite their blatant overreach, the court's failure to quash these subpoenas highlights a troubling lack of impartiality and a disregard for the protections typically afforded under the law.

Furthermore, the situation mirrors concerns raised in cases like *In re Subpoena Duces Tecum Issued to Commodity Futures Trading Commission*, 439 F.3d 740 (D.C. Cir. 2006), which emphasized the need for courts to intervene when subpoenas are overbroad or issued in bad faith. By not acting to limit these invasive requests, the court has failed in its duty to protect individuals from oppressive legal tactics, as underscored in *Watts v. Securities and Exchange Commission*, 482 F.3d 501 (D.C. Cir. 2007), where the court held that judicial oversight is critical to preventing the misuse of discovery tools to harass or intimidate.

• Denial of Jury Trial and Fair Trial Procedures: The court denied me the opportunity to request a jury trial, striking both the prosecution and pre-trial conference dates, and ultimately failed to provide a fair trial, in violation of my rights under the Sixth Amendment, which guarantees the right to a speedy and public trial by an impartial jury of the state and district wherein the crime was committed. Initially, this case was designated with a "Jury Demand," reflecting my constitutional right to trial by jury as affirmed under Rule 38 of the Federal Rules of Civil Procedure, which requires that parties be allowed to make a jury trial demand. However, this demand was unilaterally changed to a bench trial without any formal notice or consent, bypassing the procedural integrity upheld by *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959), where the Supreme Court emphasized the fundamental right to a jury trial as protected under the Seventh Amendment.

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 75 of 121 PageID 1952

Moreover, not allowing adequate time to subpoena witnesses and prepare my defense also violated the Local Rules for the Western District of Tennessee, designed to ensure equitable and efficient management of trials. The arbitrary cancellation of key trial dates without just cause has significantly hindered my ability to fully present my case and challenge the allegations against me, reflecting a disregard for the due process standards established in *Barker v. Wingo*, 407 U.S. 514 (1972). In Barker, the Supreme Court set forth a balancing test for determining whether a defendant's right to a speedy trial has been violated, emphasizing factors such as the length of the delay, the reason for the delay, the defendant's assertion of their right, and the prejudice to the defendant.

The mishandling of the procedural aspects of my trial, particularly the unnotified change from a jury trial to a bench trial, severely undermines the integrity of the judicial process and impairs my ability to mount an effective defense, as protected by both the Sixth Amendment and the procedural rules established to ensure fairness and justice in our courts. This denial of fundamental rights, including the specific provisions of the Civil Rights Act of 1964, which further encapsulates the protection against discriminatory judicial practices, necessitates immediate judicial review and corrective action to uphold the standards of justice as mandated by federal and local law.

• **Denial of In-Person Conferences:** The denial of in-person conferences further obstructed my ability to engage effectively in the legal process. Despite the critical nature of these conferences for discussing pre-trial motions, clarifying procedural questions, and facilitating fair communication between the parties, my requests for in-person meetings were consistently denied. Instead, I was forced to rely on remote communications, which proved inadequate for addressing the complexities of my case.

The right to in-person hearings and conferences is supported by Rule 16 of the Tennessee Rules of Civil Procedure, which encourages pre-trial conferences to improve trial quality through more thorough preparation. The Advisory Commission Comments to Rule 16 explicitly state that "pre-trial conferences are designed to facilitate the disposition of the action by improving communication between the court Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 76 of 121 PageID 1953 and the litigants." By denying in-person conferences, the court failed to adhere to the principles outlined in Rule 16, thereby hindering my ability to negotiate settlements, clarify misunderstandings, and prepare an effective defense.

In addition, the Tennessee Supreme Court's guidance on pre-trial procedures emphasizes the importance of in-person interactions to ensure that all parties have a fair opportunity to present their case. The court's refusal to hold in-person conferences contradicts these guidelines and represents a significant departure from standard judicial practice. This refusal prolonged the litigation process and undermined my ability to address procedural issues and effectively communicate with the court and opposing counsel.

### 5.3 Impact on Defendant's Ability to Defend Himself

The courts' civil rights violations have profoundly impacted my ability to defend myself effectively in this case. These impacts include:

- Erosion of Trust in the Judicial System: My trust in the judicial system has been severely undermined by experiences of judicial bias and potential misconduct. This erosion of confidence stems from observing firsthand how the court's actions—or inactions—appear aligned with interests opposed to mine, which contradicts the principles outlined in the Code of Conduct for United States Judges, particularly Canon 2, which emphasizes that judges should avoid impropriety and the appearance of impropriety in all activities. This foundational breach complicates my ability to believe in a fair trial outcome, amplifying stress and detracting from my focus on defense strategies.
- Mental and Emotional Distress: The court's refusal to acknowledge and accommodate my mental health needs, despite clear mandates under the Americans with Disabilities Act (ADA), exacerbates my anxiety and depression. This failure infringes ADA provisions and violates the Federal Rule of Civil Procedure 26, which governs the duty to disclose and general provisions governing discovery. By not

### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 77 of 121 PageID 1954 accommodating my condition, the court hinders my ability to prepare my case effectively, increasing psychological distress and impacting my cognitive function during critical phases of litigation.

- **Confusion and Missed Deadlines:** Improper notices and the failure to provide essential documentation have resulted in significant confusion, leading to missed legal deadlines. These issues are compounded by the court's apparent disregard for the Federal Rules of Civil Procedure, particularly Rule 6, which governs computing and extending time in filing requirements. Missing deadlines due to these procedural failings put me at a substantial disadvantage, obstructing my ability to respond appropriately to motions and other court requirements.
- Resource Drain and Intrusive Discovery: MAA's attorneys have employed unauthorized subpoenaing
  and intrusive discovery tactics that drain my resources and distract from constructing a robust defense.
  Such actions not only breach the limitations set by Federal Rule of Civil Procedure 45 regarding the
  scope and use of subpoenas but also infringe upon my privacy rights established under the Fourth
  Amendment, which guards against unreasonable searches and seizures. The financial and emotional
  toll of defending against these relentless tactics depletes my ability to sustain a prolonged legal battle.
- Inability to Secure Witnesses and Evidence: The court's decisions to strike trial and pre-trial conference dates and deny my requests for a jury trial restrict my ability to subpoena witnesses and gather supportive evidence. This limitation contravenes the Sixth Amendment, which guarantees the right to a speedy and public trial and the right to call for supportive witnesses. The denial of presenting a comprehensive defense profoundly affects my ability to challenge MAA's allegations effectively.
- Persistent Harassment and Intimidation by Legal Representatives and Judicial Officers: The ongoing
  harassment by attorneys Mills, Golwen, and Thomas, as well as the involvement of former attorney and
  now Judicial Law Clerk Michael Kapellas, has created a profoundly hostile environment that severely
  impacts my ability to concentrate on legal preparations. Their actions, including unauthorized home
  visits, hacking attempts, and relentless unwanted communications, likely contravene state and federal

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 78 of 121 PageID 1955 laws against harassment and stalking. This targeted intimidation is compounded by the disturbing use of judicial resources, as seen in the involvement of a judicial law clerk, which blurs the lines of legal propriety and deepens the conflict of interest and abuse of power within the court system.

 Impact on Personal and Professional Life: The defamation and dissemination of false information by MAA, facilitated through their legal team, have severely tarnished my reputation, adversely affecting personal relationships and future employment opportunities. This orchestrated campaign of public maligning, combined with intense legal stressors, adds layers of anxiety and distress, thereby complicating my ability to lead an everyday life amidst ongoing litigation.

These cumulative civil rights violations, procedural failures, and personal attacks orchestrated by legal representatives and abetted by judicial involvement have profoundly compromised my ability to defend myself effectively. This motion calls for immediate judicial review to address and rectify these issues and restore my rights to a fair and impartial legal process, as mandated by federal and local laws. The situation underscores the urgent need for a judicial response acknowledging and correcting the inappropriate convergence of legal advocacy and judicial conduct in this case.

### 7. Unauthorized Subpoenaing and Alteration of Records in Detail

### 7.1 Federal Rule of Civil Procedure 45 Violations

Federal Rule of Civil Procedure 45 governs the issuance and service of subpoenas. It mandates that subpoenas avoid imposing undue burden or expense on the person subject to the subpoena. Specifically, Rule 45(d)(1) requires that parties and attorneys responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. Rule 45(d)(3)(A) obligates the court to quash or modify a subpoena that:

Fails to allow a reasonable time to comply,

- Requires a person to comply beyond the geographical limits specified in Rule 45(c),
- Requires disclosure of privileged or other protected matter if no exception or waiver applies,
- Subjects a person to undue burden.

In this case, MAA's attorneys, including Ms. Paige Mills, Mr. John Golwen, and Ms. Jordan Thomas, repeatedly violated Rule 45 by issuing subpoenas that failed to meet these requirements. They amended subpoenas to include my email addresses and financial records without proper justification, subjecting me to undue burden and expense.

### 7.2 Alteration and Misuse of Personal Email Addresses and Financial Records

The attorneys representing MAA, including Ms. Paige Mills, Mr. John Gowen, and Ms. Jordan Thomas, illegally altered subpoenas without obtaining prior consent from the court. Although the judge had previously stated that the attorneys had free reign to subpoena what they wanted, this did not authorize the unlawful modification of subpoenas to include irrelevant and intrusive information (Exhibit E)

As a witness in the case, I was subjected to unauthorized and improper subpoenaing of my personal information. The attorneys altered the subpoenas to include my known email addresses. They subpoena records from these email addresses, including my Internet Service Provider (ISP) Verizon records, bank accounts, and credit card information. These actions were undertaken to intimidate and harass me despite my limited role as a witness.

The alteration of subpoenas to gather such comprehensive personal data without proper judicial oversight violated my privacy rights and the procedural safeguards to protect individuals from undue burden and harassment. These actions abuse the legal process, intend to exert excessive pressure, and cause significant distress.

### 7.3 Legal Precedents on Unauthorized Subpoenaing

Several legal precedents support the protection of individuals from unauthorized and intrusive subpoenaing practices:

- Blair v. United States, 250 U.S. 273 (1919): The Supreme Court held that subpoenas must not be used to oppress individuals or to conduct fishing expeditions. This case establishes that subpoenas must be specific, relevant, and not overly broad or burdensome.
- United States v. R. Enterprises, Inc., 498 U.S. 292 (1991): The Supreme Court emphasized that subpoenas must be reasonable and not oppressive. The Court stated that a subpoena's reasonableness is determined by weighing the relevance of the information sought, the need for the information, and the potential hardship on the recipient.
- In re Subpoena Duces Tecum, 228 F.3d 341 (4th Cir. 2000): The Fourth Circuit held that subpoenas
  must be narrowly tailored to avoid undue burden and not be used to harass or oppress the recipient.
  The court emphasized that the issuing party must demonstrate a substantial need for the information
  that cannot be otherwise met without undue hardship.

These precedents affirm the need to issue subpoenas carefully considering their impact on the recipient and reinforce the protection against unreasonable and oppressive subpoenaing practices.

### 7.4 Illegal Actions by Process Server in Virginia

In addition to the unauthorized subpoenaing and misuse of my personal information, the process server engaged in illegal actions in Virginia, which was reported to the authorities. These actions included:

### Improper Service

The process server failed to follow proper legal procedures for serving subpoenas. According to the Code of Virginia § 8.01-296, proper service requires personal delivery, delivery at the usual place of abode with a family member, or posting on the front door and subsequent mailing. Although the process server did manage to

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 81 of 121 PageID 1958

avoid improperly leaving the documents, he did not adhere to the proper protocol for personal delivery. Specifically, the process server engaged in conduct, including arriving at my residence at inconvenient times and under intimidating circumstances, undermining the service process's legitimacy. Furthermore, the server did not provide adequate notice or ensure that the documents were served in a manner consistent with legal requirements, thus contributing to the harassment and intimidation I experienced.

### Intimidation and Coercion

The process server engaged in actions intended to intimidate and coerce me into compliance. He repeatedly visited my residence at inconvenient times and used aggressive language and behavior. For instance, the process server was caught on camera arriving at my house with flashing lights, impersonating a law enforcement officer with a badge and flashlight, and snooping around my property with a flashlight. He also approached me while I was walking my dog, creating an atmosphere of fear and harassment. These tactics were intended to create a hostile environment and pressure me into compliance under duress. This behavior violates the Code of Virginia § 18.2-174, which prohibits impersonating a law enforcement officer.

### Violation of Privacy

The process server's actions included unauthorized attempts to access private property and personal information. He used an agency to look up personal information about my wife and me, which he revealed by asking if my wife was home in Minnesota. When I questioned why he believed my wife was in Minnesota, he admitted using an agency to track us. This invasion of privacy and unauthorized tracking further contributed to the overall pattern of harassment and intimidation orchestrated by MAA and their legal representatives. This conduct violates the Code of Virginia § 18.2-152.5, which addresses the unauthorized use of personal identifying information.

### **Trespassing and Stalking**

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 82 of 121 PageID 1959

Beyond improper service and intimidation, the process server engaged in behavior that could be construed as stalking and trespassing. His repeated visits to my property, often at odd hours, and his surveillance of my home and movements created a significant sense of fear and distress. Under Code of Virginia § 18.2-119, trespassing occurs when an individual remains on the property of another without permission. Additionally, the Code of Virginia § 18.2-60.3 defines stalking as repeated conduct that places a person in reasonable fear of death, criminal sexual assault, or bodily injury. The process server's actions, which included lurking around my property and following me, align with these definitions and represent severe legal violations.

These illegal actions by the process server not only violated my rights but also exemplified the broader pattern of harassment and intimidation orchestrated by MAA and their legal representatives. This misconduct added to my hostile environment, further illustrating the lengths to which MAA would go to retaliate against me for my whistleblowing activities. The egregious nature of these actions necessitates immediate judicial recognition and remedial measures to address the ongoing harassment and ensure my safety and legal protections

(Exhibit C).

In conclusion, MAA's attorneys' unauthorized subpoenaing and alteration of records and the process server's illegal actions in Virginia constitute severe violations of legal standards and my civil rights. This motion highlights these violations and demands immediate judgment to halt further misconduct, ensuring a fair and impartial resolution in a higher court.

### 8. Defamation and Public Impact

### 8.1 Overview of Defamation Law

Defamation law protects individuals from false statements that can harm their reputations. Defamation encompasses libel (written statements) and slander (spoken statements). Critical elements of defamation include:

- False Statement: The statement must be false and not an expression of opinion.
- **Publication**: The false statement must be communicated to someone other than the person defamed.
- **Fault**: The plaintiff must prove that the defendant was at fault for making the false statement. The level of fault required depends on the plaintiff's status as a public or private figure.
- **Damages**: The false statement must cause harm to the plaintiff's reputation, resulting in damages.

The **Restatement (Second) of Torts** § 558 outlines these elements, emphasizing the importance of the false statement being communicated to a third party and resulting in reputational harm.

### 8.2 Defamatory Actions by MAA

MAA has engaged in defamatory actions intended to discredit me and undermine my whistleblower complaints. Specific defamatory actions include:

- Public Statements and Online Presence: MAA has made numerous false and damaging statements about me, asserting that my whistleblower complaints are false and without merit. These statements have been disseminated widely, appearing in hundreds of online search results on Google. This widespread dissemination has severely harmed my reputation and credibility. According to Tennessee
   Code Annotated § 29-24-103, defamation involves any false statement made with malice that damages another person's reputation.
- Fake LinkedIn and Facebook Accounts: MAA or its agents created fake LinkedIn and Facebook accounts using my name and falsely attributing statements and characteristics to me, including references to my disability. These fake accounts were used to spread false information and further damage my

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 84 of 121 PageID 1961 reputation. This constitutes a deliberate and malicious act of defamation designed to mislead the public and harm my personal and professional standing. This action violates both **Tennessee Code Annotated § 47-18-104**, which prohibits deceptive practices, and **Virginia Code § 18.2-152.5**, addressing unauthorized use of personal identifying information.

- Harassment through Online Platforms: In addition to fake accounts, there have been numerous
  instances of online harassment, including fake profiles and posts that falsely accuse me of misconduct
  and discredit my whistleblower activities. These actions have been particularly damaging, creating a
  false narrative about my character and professional integrity.
- Defamatory Claims about Whistleblower Complaints: MAA has publicly claimed that my whistleblower complaints are false, baseless, and made with malicious intent. These statements are not only untrue but are also made with the intent to discredit my legitimate concerns and whistleblower activities. Such statements have caused significant harm to my reputation, leading to personal and professional distress. These actions violate Tennessee Code Annotated § 29-24-103, which provides for civil action in cases of defamation, and Virginia Code § 8.01-45, which allows for damages due to harm to reputation.

### 8.3 Public Impact and Harm to Defendant's Reputation

The defamatory actions taken by MAA have had a profound impact on my reputation and public image:

Online Presence and Search Results: MAA's false and damaging statements appear in hundreds of search results on Google, making it nearly impossible to escape the defamatory narrative they have created. This widespread online presence has had a lasting impact on my reputation, personally and professionally. This clearly violates defamation laws, as outlined in Tennessee Code Annotated § 29-24-103, and demonstrates the malicious intent behind MAA's actions.

- Impact on Employment Opportunities: The false information disseminated by MAA has made securing employment difficult. Potential employers who search my name online are confronted with a barrage of defamatory statements, fake accounts, and false allegations, all of which paint an inaccurate and damaging picture of my character and professional capabilities. This has caused substantial economic harm, actionable under Tennessee Code Annotated § 29-24-103 and Virginia Code § 8.01-45.
- Emotional and Psychological Distress: The relentless defamation and public scrutiny have caused significant emotional and psychological distress. The false statements about my disability and the nature of my whistleblower complaints have exacerbated my anxiety and depression, making it difficult to navigate daily life and maintain personal and professional relationships. The emotional distress caused by these defamatory actions is actionable under defamation law, which allows for the recovery of damages for mental anguish.
- Personal Relationships and Social Standing: The defamatory actions have strained personal relationships and damaged my social standing. Friends, family, and acquaintances who encounter false information online may believe the defamatory statements, leading to mistrust and alienation. This impact on personal relationships and social standing further exacerbates the harm caused by MAA's defamatory actions.

### 8.4 Legal Precedents on Defamation

Several legal precedents provide a robust framework for addressing defamation and holding perpetrators accountable:

 New York Times Co. v. Sullivan, 376 U.S. 254 (1964): The Supreme Court established the "actual malice" standard for defamation cases involving public figures. This case requires that the plaintiff prove the defendant knew the statement was false or acted with reckless disregard for the truth. This Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 86 of 121 PageID 1963 precedent underscores the importance of protecting individuals from defamatory statements made with malicious intent.

- Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974): The Supreme Court ruled that private individuals need not prove actual malice to recover damages for defamation. This case highlighted the lower threshold for private individuals, emphasizing the need to protect their reputations from false and damaging statements.
- Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990): The Supreme Court held that the First Amendment does not protect opinions that imply false statements of fact. This case reinforces that defamatory statements presented as opinions can still be subject to defamation claims if they imply false facts.
- Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988): This case involved the intentional infliction of emotional distress through defamatory statements. The Court ruled that public figures must demonstrate actual malice, further underscoring the protections against malicious defamation.
- **Tennessee Defamation Law**: **Tennessee Code Annotated § 29-24-103** provides that any false statement made with malice that damages another person's reputation is actionable. This statute supports the pursuit of damages for the harm caused by MAA's defamatory actions.
- Virginia State Defamation Law (Code of Virginia § 8.01-45): Virginia state law provides that any person who makes a false statement that damages another's reputation can be held liable for defamation. This statute also supports the pursuit of damages for the harm caused by MAA's defamatory actions.

In conclusion, the defamatory actions taken by MAA have caused extensive harm to my online and offline reputation. This motion seeks to highlight these violations and demand immediate judgment to halt further defamation, ensuring a fair and impartial resolution in a higher court where my rights to a fair reputation and protection from false statements are upheld.

### 9. Conflict of Interest in Detail

### 9.1 Legal Standards for Conflict of Interest

Conflict of interest in the legal context occurs when an individual in a position of authority or trust has competing interests or loyalties that could influence their decision-making. The legal standards governing conflicts of interest are designed to ensure impartiality and fairness in judicial and administrative proceedings. Essential legal standards include:

- **28 U.S.C. § 455**: This federal statute mandates that any justice, judge, or magistrate judge of the United States shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. It also requires disqualification where the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding.
- Canon 3 of the Code of Conduct for United States Judges: This canon requires judges to perform their duties impartially and diligently. It prohibits bias or prejudice and requires judges to disqualify themselves in proceedings where their impartiality might reasonably be questioned, including personal bias, prior involvement, or relationships with involved parties.
- Tennessee Rules of Professional Conduct (Rule 1.7): This rule prohibits attorneys from representing a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client or if there is a significant risk that the lawyer's responsibilities will materially limit the representation of one or more clients to another client, a former client, or a third person.
- Model Code of Judicial Conduct, Rule 2.11: This rule requires judges to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including situations where the

judge has a personal bias or prejudice concerning a party or has personal knowledge of facts that are in dispute in the proceeding.

### 9.2 Specific Conflict Involving Judicial Law Clerk and Opposing Counsel

In this case, a significant conflict of interest arises from the relationship between the judicial law clerk and the opposing counsel from Bass, Berry & Sims PLC. The specific details of this conflict include:

- Previous Employment Relationship: The judicial law clerk previously worked at Bass, Berry & Sims PLC, the law firm representing MAA. This prior professional relationship creates an appearance of partiality and potential bias, as the law clerk may have ongoing loyalties or obligations to their former employer and colleagues.
- **Personal Relationships**: The law clerk has maintained personal relationships with attorneys from Bass, Berry & Sims PLC, including regular social interactions and communication. These ongoing personal connections further exacerbate the appearance of partiality and conflict of interest, as these relationships may influence the law clerk in their judicial duties.
- Involvement in Case Management: The law clerk has been actively involved in managing various aspects of this case, including scheduling, procedural decisions, and communication with the parties.
   This level of involvement, coupled with the prior and ongoing relationships with the opposing counsel, undermines the impartiality of the judicial process.
- Lack of Disclosure and Recusal: The judicial law clerk did not disclose their previous employment with Bass, Berry & Sims PLC or their ongoing personal relationships with its attorneys despite the apparent conflict of interest. Furthermore, the law clerks did not recuse themselves from the case, continuing to influence proceedings despite the apparent conflict.

### 9.3 Conflicts of Interest at MAA

In addition to the judicial conflict of interest, significant conflicts exist within MAA that compromise the integrity of their operations and their dealings with regulatory bodies:

- Leslie Wolfgang's Multiple Roles: Leslie Wolfgang, the Senior Vice President of Ethics, is also
  responsible for running the SEC-mandated whistleblower hotline and handling comments to the board
  of directors. Additionally, Wolfgang serves as the corporate secretary and has significant financial
  interests in the company. These overlapping roles create an apparent conflict of interest, as Wolfgang's
  economic interests and executive responsibilities may influence handling whistleblower complaints and
  internal ethics investigations.
- Robert DelPriore's Dual Roles: Robert DelPriore, MAA's Executive Vice President and General Counsel, has a history with Bass, Berry & Sims PLC, where he worked in 2003. DelPriore's subsequent tenure at MAA and involvement in reviewing and approving financial statements present a conflict of interest, especially considering the significant legal and financial decisions impacting MAA. Furthermore, after DelPriore's tenure, his subsequent employer, Baker, Donelson, published two "case studies" on MAA that contained substantial information and appeared more as marketing materials for investors than objective case studies. These publications coincided with MAA's merger with Post Properties, raising concerns about transparency and regulatory oversight.
- Use of Affiliated Companies: MAA manages its insurance company, contractors, and renovation companies, creating potential conflicts of interest. This structure allows MAA to generate and approve invoices internally, raising concerns about financial transparency and possible fraud. The company's ability to create and reimburse itself through these affiliated entities warrants scrutiny under Sarbanes-Oxley Act provisions designed to prevent corporate fraud.
- Historical Conflicts: MAA's REIT structure originated with its 1995 purchase from Burlington Capital America First REIT Companies. Key figures in this acquisition, including Leslie Wolfgang, CEO Eric Bolton,

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 90 of 121 PageID 1967 and former COO AI Campbell, have longstanding financial and executive ties to MAA. This historical context suggests a pattern of conflicts and potential misconduct that dates back decades, complicating regulatory oversight and accountability.

#### 9.4 Impact on the Fairness of the Proceedings

The conflicts of interest involving the judicial law clerk and MAA have profoundly impacted the fairness and impartiality of these proceedings. Specific impacts include:

- Biased Rulings and Decisions: The prior and ongoing relationships between the law clerk and opposing counsel have resulted in biased rulings and procedural decisions that favor MAA. These biased decisions have undermined the fairness of the judicial process and disadvantaged my defense. The presence of Leslie Wolfgang in multiple influential roles at MAA further skews the internal handling of whistleblower complaints and ethics issues.
- Erosion of Trust in the Judicial Process: The conflict of interest has eroded my trust in the impartiality and integrity of the judicial process. Knowing that a critical judicial officer has a potential bias against me has made it difficult to believe that I can receive a fair trial, further exacerbating my anxiety and stress. Similarly, the conflicts within MAA have compromised my confidence in the company's internal processes and the validity of their public disclosures.
- Procedural Irregularities: The conflicted law clerk's involvement in case management has led to
  procedural irregularities, including the improper handling of motions, scheduling conflicts, and
  communication issues. These irregularities have hindered my ability to defend myself effectively and
  respond to legal challenges. Additionally, MAA's conflicted internal structure has likely led to biased
  handling of internal investigations and financial reporting.
- **Denial of Due Process**: The failure to disclose the conflict of interest and the refusal to recuse have denied me my right to due process. The presence of a biased judicial officer has compromised the

Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 91 of 121 PageID 1968 fundamental fairness of the proceedings, violating my constitutional rights. The internal conflicts at MAA further highlight systemic issues that likely affect the company's compliance with regulatory requirements and ethical standards.

- Legal Precedents on Conflict of Interest: Several legal precedents highlight the importance of addressing conflicts of interest to maintain the integrity of the judicial process:
  - Liteky v. United States, 510 U.S. 540 (1994): The Supreme Court clarified that judicial bias must stem from an extrajudicial source and that opinions formed by the judge based on events occurring during the proceedings do not constitute bias unless they display deep-seated favoritism or antagonism that would make fair judgment impossible.
  - Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009): The Supreme Court held that extreme facts of potential bias can create a constitutionally intolerable probability of actual bias. This case emphasized the importance of recusal in maintaining public confidence in judicial impartiality.
  - **Tumey v. Ohio, 273 U.S. 510 (1927)**: The Supreme Court ruled that it violates due process for a judge to have a direct, personal, substantial financial interest in concluding the defendant.

In conclusion, the conflicts of interest involving the judicial law clerk and the numerous conflicts within MAA have severely compromised the fairness and integrity of these proceedings. This motion seeks to highlight these violations and demand immediate judgment to halt further misconduct, ensuring a fair and impartial resolution in a higher court where conflicts of interest are appropriately managed and disclosed.

#### 11. Unlawful and Unjust Orders

### 11.1 Orders Prohibiting Dissemination of Information

MAA has sought and obtained several orders to prohibit the dissemination of information regarding the case during litigation. These orders are an outrageous and blatant violation of my rights, severely impacting my ability to communicate effectively about the case and my experiences privately and publicly.

- Order Prohibiting Dissemination: One of the primary orders prohibits me from discussing the details of the case, MAA's business practices, and any allegations made against the company. This order is overly broad and restricts my First Amendment rights, as established in cases such as New York Times Co. v. United States, 403 U.S. 713 (1971), which protects the right to free speech and the dissemination of information in matters of public concern. The Supreme Court in Garrison v. Louisiana, 379 U.S. 64 (1964) further upheld that truthful speech about public officials and figures is protected from censorship. It is appalling that the court would entertain such an egregious attempt to silence me, effectively gagging my ability to expose wrongdoing.
- Impact on Whistleblowing Activities: The restrictive orders have also severely impeded my ability to continue my whistleblowing activities. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, particularly Section 21F, whistleblowers are afforded protection and the ability to communicate with regulatory agencies about securities law violations. These orders directly contradict the intent of these protections, seeking to bury critical information and protect corporate misconduct at the expense of transparency and justice.

#### **11.2 Orders Restricting Access to MAA Properties**

MAA has also obtained orders that restrict my access to any MAA properties, which is unreasonable and a flagrant violation of my rights.

• Exclusion from Properties: The orders prevent me from entering or approaching MAA properties, which hampers my ability to gather evidence, meet witnesses, and fully defend myself. Such restrictions are excessive and not justified by legitimate safety or procedural concerns. Notably, I have not set foot Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 93 of 121 PageID 1970 on any MAA property since 2021, rendering these orders an unnecessary and punitive measure designed to embarrass me and demonstrate MAA's belief that it can operate with impunity.

- Precedent and Legal Standards: The restrictions imposed are inconsistent with established legal standards and precedents that ensure individuals' rights to fair participation in their defense. For example, in Mathews v. Eldridge, 424 U.S. 319 (1976), the Supreme Court emphasized the need for due process in administrative proceedings, which these orders violate. The Court's decision in Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) further reinforces the requirement for fair procedures and due process before depriving individuals of their rights or interests. It is beyond belief that these fundamental principles are blatantly disregarded in this case.
- Rights to Gather Evidence: The ability to gather evidence and prepare a defense is a fundamental aspect of due process, protected under the Sixth Amendment. The restrictions on accessing MAA properties severely hinder my ability to collect relevant evidence, interview witnesses, and build a comprehensive defense. This is especially critical in whistleblower cases where access to internal documents and premises can provide crucial evidence of misconduct. The court's failure to recognize this essential right is astonishing and indicative of a biased process.
- Misuse of Protective Orders: Restricting access without legitimate safety concerns is an abuse of the judicial process. As highlighted in Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984), protective orders must be carefully balanced to avoid unnecessarily infringing on parties' rights. The orders against me lack this balance, demonstrating a clear overreach intended to intimidate and silence. It is disgraceful that the court would support such a misuse of its authority.

#### 11.3 Impact of Unlawful and Unjust Orders on Defendant

The cumulative effect of these orders has profoundly affected my ability to defend myself and pursue justice. Their complete nonsense and egregious nature cannot be overstated. Chilling Effect on Free Speech: The prohibition on disseminating information has a chilling effect on my freedom of speech and undermines public awareness of corporate misconduct. This suppression of speech is contrary to the principles upheld in Garrison v. Louisiana, 379 U.S. 64 (1964), which protects truthful speech about public officials and figures from censorship. It is utterly indefensible that the court would allow such a gross violation of my constitutional rights.

Page 94 of 121

- Obstruction of Whistleblowing Efforts: The orders hinder my ability to engage with regulatory bodies and expose ongoing violations within MAA. The anti-retaliation provisions of the Sarbanes-Oxley Act and the Dodd-Frank Act are designed to protect whistleblowers from precisely this type of obstruction, as reinforced by Digital Realty Trust, Inc. v. Somers, 138 S. Ct. 767 (2018). The court's support of these obstructive orders is a blatant affront to the protections intended by these landmark laws.
- Personal and Professional Impact: The orders have obstructed my legal and whistleblowing efforts and caused significant personal and professional harm. The stress and stigma associated with these baseless restrictions have affected my mental health and damaged my professional reputation, exacerbating the retaliation I have already faced. The court's complicity in this harassment is unconscionable.

In conclusion, the orders obtained by MAA are unlawful and unjust and represent a shocking abuse of the judicial process. These orders violate my constitutional rights, undermine the principles of transparency and accountability, and obstruct justice. Immediate judicial intervention is essential to rectify these egregious wrongs and ensure a fair and impartial resolution.

#### 13. Conclusion

#### 13.1 Summary of Key Arguments

Throughout this motion, I have meticulously documented the numerous instances of procedural misconduct, judicial bias, and retaliation I have faced as a whistleblower. These actions by MAA and the court have significantly compromised the fairness and integrity of the judicial process. The critical issues raised include:

1. Whistleblower Retaliation and Harassment: I have presented clear evidence of retaliatory actions

taken by MAA, including baseless lawsuits, defamatory statements, and persistent harassment through various communication channels. These actions violate federal whistleblower protection laws, including the Sarbanes-Oxley Act and the Dodd-Frank Act, which safeguard whistleblowers from employer reprisals. Despite my efforts to expose unethical and illegal practices, I have been subjected to undue pressure, intimidation, and attempts to discredit my professional standing.

- 2. Judicial Misconduct and Bias: The involvement of Michael Kapellas, a judicial law clerk with prior associations with the opposing counsel's firm, and the issuance of biased orders without disclosing this conflict of interest have severely compromised the impartiality of the judicial process. This blatant disregard for the principles of judicial impartiality and independence, as outlined in Federal Rule of Civil Procedure 28 and Canon 3 of the Code of Conduct for United States Judges, has resulted in a series of biased decisions that have prejudiced my case. Additionally, the court's failure to provide necessary forms, denial of in-person conferences, and striking the trial and pre-trial conferences have further hindered my ability to present a robust defense.
- 3. **Denial of Fundamental Rights**: The denial of my request for a jury trial, lack of access to proper forms, and the court's handling of evidence have collectively violated my constitutional rights under the Fifth, Seventh, and Fourteenth Amendments. These actions have created a prejudiced and unjust legal environment, significantly impacting my right to a fair trial. The right to a jury trial, as guaranteed by the Seventh Amendment and reinforced by the Tennessee Constitution Article I, Section 6, has been egregiously denied, depriving me of an impartial forum to resolve the complex issues.

#### Document 106 Filed 06/24/24 Page 96 of 121 PageID 1973

4. Procedural Irregularities and Deliberate Delays: The court's procedural irregularities, including the issuance of subpoenas without proper evidence, mishandling of critical documentation, and denial of reasonable accommodations, have further compromised the integrity of the judicial process. The court's deliberate actions to delay and drag out the proceedings have wasted my time and increased the purported amount that I owe MAA in attorneys' fees and unsubstantiated damages. The continuous threats of arrest, contempt charges, and fines by Judge Lipman, along with the biased handling of motions and rulings, have created an environment of intimidation and unfairness.

#### 13.2 Request for Immediate Judgment

Given the substantial evidence of judicial bias and procedural misconduct, I respectfully request that this court issue an immediate judgment against me. This action is necessary to enable an appeal to a higher court, where I can seek a fair and impartial hearing. The current judicial environment, as evidenced through various actions and inactions, has consistently failed to provide the due process and fair treatment mandated by the Constitution and the Local Rules of the Western District of Tennessee, specifically designed to ensure justice and impartiality.

The court's persistent refusal to address my legitimate concerns, combined with deliberate attempts to obstruct my defense, underscores the urgent necessity for an immediate resolution. By issuing a judgment against me now, the court will enable a timely appeal to a jurisdiction untainted by the biases and procedural irregularities observed here. Such a course of action is in line with the principles of fair trial and due process as articulated in landmark Supreme Court cases such as *Goldberg v. Kelly*, 397 U.S. 254 (1970), and *Mathews v. Eldridge*, 424 U.S. 319 (1976), which underscore the critical importance of procedural fairness and impartial adjudication.

#### Document 106 PageID 1974

#### 13.3 Necessity for Immediate Legal Redress

An immediate judgment would facilitate a prompt appeal to a court that can objectively and impartially review the extensive documentation and evidence presented, free from the conflicts of interest that have compromised these proceedings. This step aligns with ethical standards set by the American Bar Association and the procedural protections afforded under the Federal Rules of Civil Procedure, which advocate for the equitable administration of justice.

Furthermore, the appellate court will have the opportunity to assess the case afresh, considering the documented evidence and arguments without the bias and procedural flaws that have characterized the current process. By granting this request, the court will not only restore confidence in the judicial system but also uphold the integrity of legal proceedings.

The ongoing threats of arrest, contempt, and fines, combined with unnecessary delays and the protracted nature of this case, have unduly burdened me and disrupted my daily life. The actions taken by the court, influenced by apparent bias and misconduct, have unjustly inflated the amounts I allegedly owe in attorney's fees and unsubstantiated damages.

In conclusion, The procedural misconduct, denial of fundamental rights, and biased treatment I have endured highlight profound flaws in the administration of justice in my case. The repeated and systematic nature of these violations underscores the critical need for judicial reforms to prevent such abuses of power and to protect the integrity of the legal system in Tennessee. Immediate intervention and corrective measures are imperative to restore my right to a fair trial and to ensure that similar violations do not recur in future cases. By issuing an immediate judgment against me, the court can facilitate a timely and just resolution of my case,

ensuring that justice is served and my constitutional rights are upheld. This step is essential not only for my case but for maintaining the public's trust in the fairness and efficacy of our judicial system.

#### 14. Defending Fundamental Rights and Advocating for Whistleblower Justice

I will not give up my right to free speech, the right to disseminate information, and the right to speak the truth about MAA and their company. The First Amendment of the United States Constitution guarantees the right to free speech, and I intend to exercise this right entirely and without hesitation. My efforts to expose unethical and illegal practices at MAA are protected activities, and any attempts to silence me through intimidation or retaliation are futile and a direct violation of my constitutional rights.

The First Amendment explicitly protects the rights of individuals to speak freely, assemble, and petition the government for a redress of grievances. This protection extends to whistleblowers who expose wrongdoing within organizations, as their speech is considered a matter of public concern. In the landmark case of **New York Times Co. v. Sullivan**, 376 U.S. 254 (1964), the Supreme Court underscored the importance of free speech, especially in matters involving public interest. The Court held that public debate must be "uninhibited, robust, and wide-open" and may include "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Similarly, in **Garcetti v. Ceballos**, 547 U.S. 410 (2006), the Supreme Court reaffirmed that public employees do not surrender their First Amendment rights by their employment. The decision recognized the critical role of whistleblowers in exposing government inefficiencies and misconduct, ensuring that their speech, when addressing matters of public concern, is protected from employer retaliation. This precedent applies to my case as I continue to expose MAA's malpractices and unethical behavior.

Furthermore, the Whistleblower Protection Act (WPA) and the Sarbanes-Oxley Act (SOX) provide additional protections for individuals who disclose information about corporate fraud and violations of securities laws. These statutes explicitly prohibit employers from retaliating against employees who engage in protected whistleblowing activities. The Dodd-Frank Wall Street Reform and Consumer Protection Act further

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 99 of 121 PageID 1976

strengthens these protections by providing robust anti-retaliation provisions and offering financial incentives for whistleblowers who provide information leading to successful enforcement actions.

Real-life examples abound of whistleblowers who have faced significant challenges yet persisted in bringing the truth to light. Notable cases include Sherron Watkins, who exposed accounting irregularities at Enron, and Edward Snowden, who revealed widespread surveillance practices by the National Security Agency (NSA). Despite immense pressure and threats, these individuals remained resolute in their commitment to transparency and accountability. Their courage underscores the vital role of whistleblowers in upholding ethical standards and protecting public interest.

The notion that I can be intimidated into silence is a gross miscalculation and a waste of time. I will continue to speak out and share the truth about MAA's actions, no matter the obstacles. My commitment to transparency and accountability remains steadfast, and I will not be deterred by threats or coercion. The Supreme Court, in **Brandenburg v. Ohio**, 395 U.S. 444 (1969), established that speech can only be limited if it is directed to inciting imminent lawless action and is likely to produce such action. My disclosures about MAA are lawful and necessary to inform stakeholders and the public about the company's misconduct.

Moreover, the court's repeated threats of arrest, contempt charges, and fines represent an egregious abuse of judicial power. Such actions are intended to intimidate and silence me. Still, they also infringe upon my fundamental rights as protected under the Constitution. The ongoing attempts to delay and drag out the proceedings only escalate the purported damages claimed by MAA, further underscoring these actions' unjust and biased nature. In conclusion, the Constitution and federal laws unequivocally protect my right to free speech and to disseminate information about MAA's unethical and illegal practices. Any attempts to infringe upon these rights will be met with the total weight of legal protections afforded to me as a whistleblower and citizen committed to upholding the principles of justice and integrity. I will not be intimidated into silence and will continue to expose the truth, ensuring that MAA is held accountable for its actions. The principles of free

speech, transparency, and accountability are paramount, and I remain steadfast in my commitment to these values.

#### 14.1. Medical Suffering and Impact on Mental Health

**Workplace Conditions and FMLA Issues:** While employed at Post Tysons Corner, a property managed by MAA, I was exposed to deplorable working conditions, including infestations, malfunctioning safety equipment, and inadequate building maintenance. These conditions contributed to significant mental health deterioration. During a critical period when my father suffered a severe COVID-19-related illness, MAA enforced the Family and Medical Leave Act (FMLA) against my wishes, compelling me to take extended leave rather than the brief respite I had requested. This action contradicted the flexibility recommended by the FMLA, designed to support employees in balancing work and health demands without undue employer interference (29 CFR §825.700).

**Pay Disparity and Employment Discrimination**: The discovery of my lower compensation compared to less senior staff further compounded my stress, suggesting potential violations of the Equal Pay Act (29 U.S.C. §206(d)) and Title VII of the Civil Rights Act of 1964, which protect against wage discrimination based on arbitrary or discriminatory practices. The emotional toll of feeling undervalued was profound, especially given my significant contributions to the organization.

**Termination and Retaliatory Harassment:** My eventual termination, attributed to the anxiety exacerbated by these workplace issues, may constitute unlawful retaliation under the Americans with Disabilities Act (ADA). The ADA (42 U.S.C. §12112) prohibits employment discrimination based on disability and requires employers to provide reasonable accommodations rather than penalize employees for disability-related issues. Following my termination, I experienced relentless harassment, including surveillance and threats, likely contravening both state and federal laws against stalking and harassment. Such actions also breach the ethical guidelines set forth by the American Bar Association, particularly Rule 4.4 regarding respect for the rights of third persons,

which prohibits using means that have no substantial purpose other than to embarrass, delay, or burden a third person.

**Increased Legal and Psychological Pressures:** The legal challenges initiated by MAA, including unfounded allegations and a meritless lawsuit for trademark infringement, appear to be strategic legal bullying tactics, potentially violating Rule 11 of the Federal Rules of Civil Procedure, which sanctions parties for filing frivolous litigation. The psychological impact of these compounded legal and personal pressures was debilitating, necessitating medical intervention to manage severe anxiety and depression.

**Need for Legal and Judicial Reform:** The behavior exhibited by MAA and the lack of adequate judicial intervention to halt such abuses call for immediate reforms within the legal system. The principles upheld by landmark cases such as *Gibson v. Berryhill*, 411 U.S. 564 (1973), which addressed biased adjudicative processes, and *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980), which emphasized the importance of impartiality in administrative proceedings, underscore the necessity for a fair and unbiased judicial review of my case.

The cumulative impact of professional misconduct, continuous harassment, and personal tragedies as a result of MAA's actions has led to severe and ongoing medical suffering and anxiety. The actions of MAA not only affected my professional life but have had devastating impacts on my health and well-being. This situation underscores the critical need for a judicial and systemic response to protect whistleblowers and ensure fair treatment within the legal framework. Immediate intervention is necessary to restore my rights to a fair trial and protect my well-being, ensuring such abuses are not repeated in future cases.

#### 14.2 Persistent Judicial Bias and Ethical Conflicts

The ongoing legal proceedings in the Western District of Tennessee reveal a disturbing scenario where the misuse of judicial influence and conflicts of interest converge to form a potent threat to the integrity of the legal system. The involvement of a Judicial Law Clerk, who previously worked for Bass, Berry & Sims PLC—the law firm representing Mid-America Apartment Communities, Inc. (MAA)—casts a long shadow over the

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 102 of 121 PageID 1979

impartiality and fairness of the court's rulings in this case. This situation raises profound ethical concerns and infringes upon established legal standards to safeguard judicial integrity.

Under the ethical guidelines specified in Rule 1.9 of the American Bar Association's Model of Professional Conduct, clear stipulations against conflicts of interest may affect an attorney's ability to represent their client impartially. This rule insists that an attorney previously representing a client must not represent another client in the same or substantially related matter if the interests are materially adverse without the former client's informed consent. The prior association of the Judicial Law Clerk with Bass, Berry & Sims PLC and their subsequent involvement in judicial decision-making in a case where the firm represents one of the parties undeniably challenges the principle of impartial adjudication and may be seen as a breach of this ethical standard.

The integrity of judicial decisions can also be scrutinized under Canon 3 of the Code of Conduct for United States Judges, which mandates that judges perform their duties impartially, competently, and diligently. The canon specifically demands that judges avoid impropriety and the appearance of impropriety, ensuring they remain free of personal bias or prejudice. The ongoing relationship of the law clerk with a party representing the firm potentially breaches these canons, leading to a perception of bias that can undermine public confidence in the judicial process.

Additionally, Federal Rule of Civil Procedure 1.9 necessitates rigorous enforcement in judicial settings, mainly to prevent conflicts of interest from influencing court outcomes. Such conflicts not only compromise the fairness of the trial but also damage the judicial system's reputation for administering unbiased justice. When court personnel like law clerks have ties to legal entities involved in cases, their ability to influence case outcomes—directly or indirectly—can lead to significant ethical and legal dilemmas.

Moreover, the potential abuse of judicial power, in this case, reflects the issues highlighted in landmark judicial decisions, such as *Caperton v. A.T. Massey Coal Co.*, where the U.S. Supreme Court held that there must be "a

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 103 of 121 PageID 1980

serious risk of actual bias" based on objective and reasonable perceptions when a party has had significant and disproportionate influence in placing a judge in their position. This standard is crucial in evaluating the fairness of judicial proceedings and ensuring that justice is not only done but is seen to be done.

The involvement of a Judicial Law Clerk from a law firm representing a party in the lawsuit raises questions about the judicial process's ethical implications and operational integrity. These connections could violate several judicial fairness and impartiality tenets articulated in legal and moral frameworks. It is imperative that the judiciary upholds its duty to administer justice without favoritism or bias and maintains a system where legal disputes are resolved based on merits and facts, devoid of any undue influence from prior associations or external pressures.

In conclusion, the unfolding events in the Western District of Tennessee call for a thorough reassessment of how conflicts of interest are managed within the judiciary to preserve the foundational principles of justice and equity that underpin the American legal system. This case exemplifies the critical need for stringent measures to prevent judicial bias or misconduct, ensuring the court remains a bastion of impartiality and fairness.

#### 14.3 Overview of Court Proceedings and Legal Challenges

On April 3rd, I was officially designated as a witness in a trademark infringement case. A subpoena was issued that day, notably failing to list any of my known email addresses. Attorney Paige Mills subsequently amended the subpoena to include my email addresses—Mphillyd@gmail.com and Phillydee100@gmail.com—based on her assumption that these accounts were closed. This assumption was seemingly confirmed by an auto-response indicating the accounts were inactive, a detail also communicated to the SEC through a TCR. The approach taken by Mills raises concerns about compliance with Federal Rule of Civil Procedure 45(d)(3)(A)(ii), which mandates that subpoenas avoid imposing undue burden or expense. The lack of proper verification of the account's status and the speculative nature of Mills' actions could be viewed as an overreach.

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 104 of 121 PageID 1981

By the end of April, specifically on the 29th, Google notified me about the altered subpoena, though I chose to withhold this information until the end of July. Before my disclosure, on June 13th, Ms. Mills prematurely updated the legal complaint to assert that I was the creator of the infringing website, even though my email and ISP records had been subpoenaed without confirmation of my involvement from the web host, Wix. This assertion lacked the factual validation required under Federal Rule of Civil Procedure 11, stipulating that claims made in legal filings must be substantiated.

During a September 11th conference call with the judge, I voiced my concerns regarding the procedural fairness of the case. It was not until November that I discovered that Michael Kapellas, previously employed by the same firm as Ms. Mills, had authored several orders in the case. The nature of these orders, presumably favoring his former employer, touches on issues related to Federal Rule of Civil Procedure 28 and Canon 3 of the Code of Conduct for United States Judges, which enforce the requirement for judicial impartiality and independence.

Before discovering Kapellas' background, he continued to issue orders and motions that prejudged the case during its discovery phase. This premature judgment, absent a complete factual record, suggests a breach of Federal Rule of Civil Procedure 56, which governs summary judgment and stipulates that such a judgment should only be granted when the factual record is complete. Any suspicion of ex parte communications with the judge or judicial law clerk would violate the Federal Rule of Civil Procedure 23(b) and disrupt the transparency and fairness mandated in judicial proceedings.

Despite these concerns, Mr. Kapellas remains involved in the case, continually issuing orders against me. This ongoing involvement was recorded even after opposing counsel admitted that he previously worked for their firm, Bass, Berry & Sims PLC. This is outlined in the court docket, where my challenges to the judge's decisions have been documented. Potential conflicts of interest and procedural irregularities linked to Mr. Kapellas raise significant concerns under Federal Rule of Civil Procedure recusal rules. This necessitates a judge's disqualification in any proceeding where his impartiality might reasonably be questioned.

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 105 of 121 PageID 1982

MAA alleges, without evidence, that I made numerous disparaging comments about them. Conversely, I have consistently provided substantial evidence that counters their assertions of innocence since 2021. A detailed examination of MAA's corporate structure would reveal significant deficiencies in its internal controls, including documented instances where it issued false and misleading statements to investors, the public, and its employees. Additionally, there is verifiable evidence that MAA has inaccurately reported its casualty expenses and maintained improper and unsafe policies regarding pet management, grill safety, and water remediation procedures.

These discrepancies are supported by testimonies from hundreds of former employees, numerous negative resident reviews, and multiple complaints filed with the Better Business Bureau (BBB). MAA's categorical denial of these well-documented accusations in court documents starkly contradicts the evidence I have presented and could potentially breach Federal Rule of Civil Procedure 11. This rule emphasizes the need for factual accuracy and legal propriety in judicial filings, as underscored in past legal precedents. The judicial proceedings I am entangled in exhibit pronounced signs of judicial misconduct and biases, particularly highlighted by the improper issuance of subpoenas and the biased treatment throughout the case. This has disrupted my ability to defend effectively and significantly infringed upon my constitutional rights and due process. Immediate action is imperative to address these breaches and restore my ability to engage in legal defenses effectively.

#### 14.4 Confronting MAA's Discriminatory Practices Against Mental Illness and Disability

The portrayal of my actions as intimidating and harassing, including allegations of submitting song lyrics in whistleblower complaints and expressing what have been described as absurd comments, is not only unfounded but unfairly paints me as an unhinged individual. This characterization stems from a troubling and baseless narrative that I am merely "acting" out my grievances, a portrayal that MAA has insisted upon despite clear evidence.

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 106 of 121 PageID 1983

These allegations seem to originate from a profoundly problematic demand made by MAA in 2019, where I was coerced under duress to either declare a "mental illness" as my disability to avoid an apartment fee or face financial penalties. This forced disclosure has since been manipulated to cast doubt on my mental stability and motivations, framing my legitimate complaints and legal actions as the products of an unstable mind rather than grounded in fact and justice.

This narrative not only discredits my genuine concerns but also leverages sensitive personal information in a retaliatory manner, further exacerbating the stress and challenges I face. By painting me as erratic and unhinged, MAA aims to deflect from the substantive issues at hand—alleged corporate malpractices and ethical violations—and undermine my credibility. Such tactics are not only unethical but also profoundly harmful, perpetuating a stigma around mental health that should have no place in modern employment and legal practices.

#### 16. Responses to Various of Plaintiff's Motions and Court Orders

#### Document 6 - Addressing 'PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY'

In challenging the subpoena issued under the "PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY," as detailed in Document 6 of the docket, significant concerns arise concerning both the legal basis for the targeted discovery and the potential misuse of the judicial process. The Federal Rules of Civil Procedure (FRCP) 26(b) mandate that discovery be both relevant to the claims or defenses and proportional to the needs of the case. The specificity and proportionality required by this rule appear to be lacking in the justification for singling me out among various former employees. This raises a substantive question about the adequacy of the plaintiff's evidence, linking me directly to the alleged infringing activities and suggesting a potential overreach in the discovery process.

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 107 of 121 PageID 1984

The targeting of a former employee who has engaged in whistleblowing activities, as I have, also raises significant legal and ethical concerns. The whistleblower protections under the Sarbanes-Oxley Act and Dodd-Frank provide a robust shield against employer retaliation, which must be considered here. The seminal case of *Sylvester v. Parexel International LLC* clarifies the broad protections afforded to whistleblowers, indicating that any legal actions taken against such individuals need to be scrutinized for underlying retaliatory motives. Additionally, the Sixth Circuit's decision in *Rhinehimer v. U.S. Bancorp Investments, Inc.* underscores the judiciary's responsibility to examine claims of retaliation critically, especially when they follow closely on the heels of whistleblowing activity.

Moreover, the Western District of Tennessee's Local Rules emphasize that discovery requests must be narrowly tailored and directly relevant to the specific claims or defenses involved in the case. As proposed, the expansive nature of the subpoenas appears to contravene these requirements, potentially constituting a misuse of the discovery process akin to a fishing expedition. This is supported by decisions like *Gonzales v. Google, Inc.*, where courts have intervened to curtail discovery demands that overreach, impose undue burdens, or infringe on privacy without sufficient justification.

In light of these considerations, the court must require a more rigorous demonstration of the relevance and necessity of the discovery sought by the plaintiff. The lack of a clear, substantiated link between my actions and the alleged infringement activities necessitates carefully reconsidering the appropriateness of the subpoena. The principles upheld in *United States v. R. Enterprises, Inc.* affirm that parties seeking discovery explicitly demonstrate the materiality and pertinence of the information requested to their legal claims or defenses. Therefore, I respectfully request that this Court critically evaluate the plaintiff's motion for expedited discovery and consider the potential for misuse of the process as a tool for retaliation against a whistleblower, which would not only harm me unjustly but would also undermine the integrity of judicial protections designed to encourage the reporting of unethical or illegal practices.

#### Document 7 - Addressing 'MEMORANDUM OF FACT AND LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR

#### LIMITED EXPEDITED DISCOVERY'

The "MEMORANDUM OF FACT AND LAW IN SUPPORT OF Plaintiff's Motion FOR LIMITED EXPEDITED DISCOVERY," outlined in Document 7, reveals substantial legal shortcomings and potential misapplications of the discovery process. The Federal Rules of Civil Procedure (FRCP) 34 set clear standards regarding the specificity and necessity of document production and electronically stored information. The plaintiff's extensive discovery requests lack the precise justification these rules require, questioning the appropriateness of such wide-ranging discovery actions.

The targeting of a former employee and whistleblower raises severe concerns about the underlying intentions of these legal actions. The protections under the Whistleblower Protection Act, which safeguards individuals against retaliation for lawful disclosures of misconduct, are highly relevant here. Given the history of whistleblowing, the nature of the plaintiff's requests and the timing appear to implicate potential retaliatory motives unsupported by direct evidence linking my activities to the alleged legal violations.

Additionally, the Local Rules of the Western District of Tennessee advocate for discovery requests to be precise and minimally intrusive. The plaintiff's demands for expansive discovery could potentially exceed what is relevant and proportional to the matter at hand, suggesting a possible misuse of the discovery process. This concern is echoed in Supreme Court rulings, such as *Oppenheimer Fund, Inc. v. Sanders,* which stresses the importance of limiting discovery strictly to pertinent issues to prevent burdensome and harassing legal maneuvers.

The lack of a direct and substantiated link between the alleged actions and the expansive discovery requests necessitates careful consideration of these demands' validity and ethical implications. Legal principles, such as those articulated in *Ashcroft v. Iqbal*, affirm that substantive factual support is crucial for advancing legal

proceedings, including discovery, to prevent procedural abuses that could undermine the integrity of the judicial process.

#### Document 8 - Addressing 'ORDER GRANTING PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY'

The "ORDER GRANTING PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCOVERY" delineated in Document 8 of the docket, though granted by the court, raises critical concerns regarding the application and the broader implications of such judicial decisions. This order permits the plaintiff to engage in expedited discovery before the mandatory Rule 26(f) Scheduling Conference, primarily to identify the defendants involved in alleged online misconduct. The court's decision, rooted in the establishment of 'good cause' as defined under Federal Rule of Civil Procedure 26(d)(1), deserves meticulous review, especially in the context of potential misuse or overreach of discovery processes.

Federal Rule of Civil Procedure 26(d)(1) is designed to restrain premature discovery to ensure that it does not become a tool for harassment or undue burden. While district courts within the Sixth Circuit, including precedents like *Arista Records, LLC v. Does 1-15* and *Simpson v. Doe #1-2*, recognize the necessity of good cause for such early discovery, it is imperative to scrutinize whether the justification provided truly meets the threshold of 'good cause.' It is crucial to consider whether alternative mechanisms could achieve the same ends without potentially infringing on individuals' rights or privacy.

The claims of infringement and unfair competition, which typically underpin requests for expedited discovery, require carefully balancing interests. Claims that hinge primarily on the anonymity of online actions must be meticulously vetted to prevent a scenario where the discovery process is used to bypass standard procedural safeguards against speculative litigation or privacy invasions. The Supreme Court's emphasis on protecting individuals from overly broad legal demands, as seen in *Oppenheimer Fund, Inc. v. Sanders*, stresses the need for precision and relevance in discovery requests.

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 110 of 121 PageID 1987

Moreover, the narrow scope of the requested discovery, as claimed by the plaintiff, should be critically examined to ensure it does not extend beyond what is strictly necessary to identify the defendants. This involves a nuanced consideration of the information requested and its direct relevance to the case. The principle that discovery should not be broader than necessary to achieve its purpose is well established in legal precedent. It is crucial in preventing the misuse of discovery for exploratory rather than evidentiary purposes.

#### Document 10 - My Motion to Quash Subpoena

In Document 10, titled "Non-Party Witness Dennis Philipson Motion to Quash Subpoena," I, Dennis Philipson, lay out my case for the court to dismiss the subpoena demanding my participation in legal actions against Mid-America Apartment Communities, Inc. (MAA). My argument against this subpoena is multifaceted, emphasizing geographical impracticality, a lack of pertinent electronic evidence, and previous engagements in protected whistleblowing activities.

Firstly, I reside in Alexandria, VA, which is approximately 665 miles away from Nashville, TN, where the court hearings are scheduled. The significant distance poses not only logistical challenges but also undue hardship, which under Federal Rule of Civil Procedure 45(d)(3)(A)(ii) provides grounds for quashing a subpoena if it requires travel of more than 100 miles from where a person resides, is employed, or regularly transacts business in person.

Furthermore, I possess no electronic evidence relevant to the complaint's specifics against MAA. This lack of proof aligns with FRCP 26(b)(1), which mandates that discovery should be relevant to any party's claims or defenses and proportional to the case's needs. In this case, the subpoena fails to meet these criteria, as it does not relate to tangible elements of the litigation but seeks information beyond the scope of the allegations. Adding to this, my prior whistleblowing activities are crucial to understanding the context of the subpoena. Between 2021 and 2022, I made protected disclosures to the SEC, DOJ, and IRS concerning suspected illegal activities within MAA, including securities, business, accounting, and tax fraud. These disclosures were

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 111 of 121 PageID 1988

protected under the whistleblower provisions of the Sarbanes-Oxley Act (18 U.S.C. §1514A), which shields individuals from retaliation for reporting fraudulent activities. My naming in this subpoena appears to be a breach of these protections, particularly considering the lack of follow-through on issues I raised, such as the promised internal audit report from MAA.

The Western District of Tennessee's Local Rule 26.01(c) states that the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that the discovery is unreasonably cumulative or duplicative or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Given that much of the information MAA seeks through this subpoena is publicly accessible or under investigation by federal agencies, the subpoena's demands are arguably excessive and redundant.

Lastly, the broad public access to complaints against MAA, some of which I have detailed, further questions the necessity and scope of the subpoena. As highlighted in my submission, the information MAA alleges I need is available on public forums and social media. This public availability of information should negate the need for my involvement, according to principles established in cases like *Oppenheimer Fund, Inc. v. Sanders*, where the Supreme Court highlighted the need for discovery requests to be specific and limited to pertinent information.

In conclusion, this motion to quash the subpoena is supported by federal rules and case law that protect individuals from onerous legal demands, especially when such demands appear retaliatory against a whistleblower. This situation necessitates careful judicial consideration to ensure that discovery processes are not misused to the detriment of individuals who have lawfully reported misconduct.

#### Document 11 & 12 - Addressing 'NOTICE OF APPEARANCE OF JOHN S. GOLWEN AND JORDAN E. THOMAS'

The notices of appearance filed by John S. Golwen and Jordan E. Thomas, as represented in Document 11 and Document 12, respectively, signal the entry of additional counsel for Plaintiff Mid-America Apartment Communities, Inc. from the law firm Bass, Berry & Sims PLC. This development introduces significant considerations regarding the management of the case and the adherence to ethical and legal standards. Under Federal Rule of Civil Procedure 83 and the Local Rules of the Western District of Tennessee, attorneys must comply with the court's procedural and ethical norms. The addition of counsel should enhance the efficiency and integrity of the proceedings, ensuring that all actions are justified and contribute positively to the administration of justice.

The engagement of multiple attorneys from the same firm raises practical questions under Federal Rule of Civil Procedure 11, which demands that legal filings and procedural actions be grounded in a legitimate purpose. The rule aims to prevent filings that might be used to harass or unnecessarily increase the cost of litigation. The involvement of additional legal representatives mustn't burden the judicial process or create undue delays. From an ethical standpoint, the American Bar Association's Model Rules of Professional Conduct, particularly Rule 1.3 on diligence, mandate that lawyers act with commitment and dedication to the interests of their clients without overburdening the judicial system. The case's demands should necessitate the strategic addition of attorneys, reflecting a real need for specialized expertise or a division of workload rather than a tactic to overwhelm the opposition or complicate the legal proceedings.

In summary, the expansion of the plaintiff's legal team with attorneys John S. Golwen and Jordan E. Thomas must be examined to ensure it aligns with the ethical and procedural standards expected in federal litigation. This scrutiny ensures that their participation is essential and beneficial for the effective progression of the case, maintaining the focus on achieving a fair and timely resolution.

#### Document 13 - Addressing 'Plaintiff's RESPONSE TO DENNIS PHILIPSON'S MOTION TO QUASH'

In my response to Document 13, where Mid-America Apartment Communities, Inc. (MAA) opposes my motion to quash the subpoena, I address significant legal and procedural errors in their argumentation and demonstrate the misuse of judicial processes. MAA's opposition relies heavily on the necessity of the subpoena under Federal Rule of Civil Procedure 45, emphasizing its role in the discovery process related to their allegations of trademark infringement and unfair competition.

Firstly, the scope and nature of the subpoena issued against me appear to exceed the reasonable boundaries set by Federal Rule of Civil Procedure 45(c), which stipulates that a subpoena must not impose an undue burden on the person. The demands of the subpoena, requiring vast amounts of personal and professional communications, seem disproportionate and potentially invasive, particularly given the lack of direct evidence linking me to the alleged wrongful activities.

Furthermore, MAA's efforts to connect my past whistleblowing activities with the alleged infringements involve a critical misinterpretation of the legal protections afforded to whistleblowers under the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. This federal statute protects employees from retaliation for reporting fraudulent activities and is designed to encourage the exposure of illegality. Contrary to MAA's claim, my whistleblower activities should not be used as a basis for speculative linkage to unrelated alleged trademark infringements.

Additionally, MAA's argument lacks substantial proof that I am the anonymous John Doe they seek. Their reliance on circumstantial evidence and conjecture about email patterns and domain registrations fails to meet the burden of proof required for such a severe invasion of privacy. This is a crucial consideration under the Federal Rule of Civil Procedure 26(b)(1), which requires that discovery must be relevant and proportional to the needs of the case. The speculative nature of MAA's claims suggests a potential misuse of the discovery process, possibly intended to harass or intimidate rather than to gather relevant evidence.

The local rules of the Western District of Tennessee also underscore the necessity for discovery requests to be narrowly tailored and directly relevant to the case's claims or defenses. The broad and unfocused nature of the subpoena issued against me, as described in MAA's response, does not align with these local procedural norms. In contesting this subpoena, I am not merely defending against an unwarranted personal intrusion but also advocating for the observance of judicial standards that protect all individuals from legal overreach and preserve the integrity of the whistleblower protections. This defense is grounded in the specific rules governing discovery and subpoenas and the broader legal principles that safeguard individual rights against corporate misuse of the legal system.

#### Document 14 - Challenging the Credibility of 'DECLARATION OF LESLIE WOLFGANG'

In Document 14, Leslie Wolfgang attempts to characterize my legitimate whistleblowing activities as mere harassment, directly contradicting the protections afforded under the Sarbanes-Oxley Act, 18 U.S.C. § 1514A. This law explicitly shields employees who report fraudulent activities, emphasizing the need to review claims made in her declaration carefully.

According to state business records, Leslie Wolfgang has deep roots within Mid-America Apartment Communities, Inc. (MAA), with ties dating back to at least 1995. Her long tenure in roles such as Senior Vice President, Chief Ethics and Compliance Officer, and Corporate Secretary places her at the forefront of managing the company's response to internal complaints. This positioning raises substantial concerns about her ability to handle whistleblower complaints impartially, given her vested interest in protecting the company's reputation and operational stability.

The inherent conflict of interest posed by Wolfgang's dual role in corporate governance and ethics oversight suggests a potential bias in how whistleblower complaints are processed and addressed. Corporate governance standards typically require that officers like Wolfgang manage their duties without prejudice and maintain the highest ethical standards. These standards ensure that internal complaints are handled fairly and transparently to safeguard the whistleblower and corporate integrity.

Furthermore, Wolfgang's declaration attempts to link my protected whistleblower activities to alleged trademark infringements without presenting concrete evidence. This approach could be seen as abusing the

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 115 of 121 PageID 1992

legal process, aiming to suppress legitimate whistleblowing by conflating it with unrelated legal violations. Such actions may not only violate Federal Rule of Civil Procedure 11, which mandates that claims be wellgrounded in fact, but also could potentially infringe upon the ethical obligations outlined by corporate governance standards to act in good faith and the best interest of transparency.

Given Wolfgang's significant influence over internal processes and her potential biases, it is critical to scrutinize the motivations behind her statements and MAA's strategies.

#### Document 15 - Argument Against 'ORDER DENYING DENNIS PHILIPSON'S MOTION TO QUASH SUBPOENA'

The court's denial of my motion to quash the subpoena, as detailed in Document 15, disregards critical aspects of Federal Rule of Civil Procedure 45 concerning undue burden and geographic limitations. The decision fails to recognize the substantial inconvenience and potential harm imposed by the subpoena's demands, which expect me to produce extensive personal communications that are arguably irrelevant to the claims at issue. This overlooks the principle that discovery should not be overly burdensome or disproportionate to the matter, particularly when such requests extend beyond reasonable geographic bounds as stipulated in FRCP 45(c).

Moreover, the court's analysis underestimates the protective scope of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, which safeguards whistleblowers against retaliation for lawful disclosures of information believed to evidence fraudulent activities. The declaration that my whistleblowing claims do not meet the act's standards for protection not only misapplies the law but also potentially exposes me to retaliatory actions by the plaintiff, Mid-America Apartment Communities, Inc. (MAA), which the act is specifically designed to prevent.

Additionally, the court's reliance on the plaintiff's arguments to establish a connection between my lawful whistleblower activities and the alleged wrongful acts of John Doe 1-2 is speculative and unsupported by substantive evidence. This reliance results in a prejudicial interpretation that seems to conflate my protected disclosures with unauthorized actions, thereby undermining the integrity of whistleblower protections.

## Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 116 of 121 PageID 1993

The decision also does not adequately address my arguments regarding the non-existence of the alleged evidence, which I have purportedly already turned over to federal authorities as part of my whistleblower activities. This oversight disregards these communications' potential confidentiality and privilege, raising concerns about legally handling sensitive information under the whistleblower provisions.

Given these considerations, the court's order to deny the motion to quash appears to be grounded in an incomplete assessment of the legal standards and facts. It overlooks established federal protections for whistleblowers, misinterprets the requirements of FRCP 45 concerning undue burden, and fails to ensure that discovery obligations do not infringe upon the legal rights and protections afforded to individuals under U.S. law. The implications of this decision necessitate a thorough review to align with the principles of justice, fairness, and the proper application of the law in federal proceedings.

#### Document 16 - Argument Against 'FIRST AMENDED COMPLAINT'

The "First Amended Complaint" by Mid-America Apartment Communities, Inc. (MAA) inappropriately characterizes my legitimate whistleblowing and advocacy efforts as malicious acts of trademark infringement, unfair competition, and cyber harassment. This misrepresentation and the alleged legal infractions are baseless and appear to be tactical maneuvers intended to silence and penalize me for exposing questionable practices within MAA. Such actions by MAA underscore a misuse of legal frameworks, likely leveraging biases within the judicial system to suppress valid corporate criticism.

First, the assertion of personal jurisdiction based on my alleged online activities, as claimed by MAA, grossly misapplies the principles of jurisdiction established by landmark U.S. Supreme Court decisions such as *International Shoe Co. v. Washington*. The complaint suggests that simply because my online activities, aimed at advocating for transparency and ethical conduct, were accessible in Tennessee, this alone suffices to establish jurisdiction. This interpretation dangerously stretches the bounds of personal jurisdiction and risks

chilling free speech by setting a precedent that any online critique could subject individuals to litigation in distant forums.

Furthermore, MAA's use of trademark law to frame my activities as infringement incorrectly applies the Lanham Act, which is intended to prevent consumer confusion and protect consumer welfare—not to shield corporations from scrutiny or criticism. The activities I engaged in, which are being wrongfully depicted as competitive and misleading, were efforts to bring light to what I perceived as significant ethical lapses within the company. Using trademark claims to stifle whistleblower activities constitutes a misappropriation of intellectual property law for retaliatory purposes.

Moreover, the allegations of harassment and cyber harassment are unfounded and unsupported by concrete evidence that demonstrates any intent to harm. These claims seem to conflate my efforts to communicate concerns about MAA's business practices with acts of personal vendetta. This is a mischaracterization and likely an attempt to intimidate and retaliate against me for utilizing established channels for reporting misconduct protected under whistleblower statutes like the Sarbanes-Oxley Act.

The procedural handling of these claims and the court's readiness to entertain such baseless accusations raise serious concerns about potential judicial bias and ethical lapses. The Western District of Tennessee's local rules emphasize justice and fairness, which necessitate an impartial and thorough examination of all claims, mainly when the stakes involve potential suppression of protected whistleblower activities.

## Document 19 - Argument Against 'MOTION AND MEMORANDUM FOR CONTEMPT AND SANCTIONS FOR FAILURE TO RESPOND TO SUBPOENA'

In response to the "Motion and Memorandum for Contempt and Sanctions for Failure to Respond to Subpoena" filed by Mid-America Apartment Communities, Inc. (MAA), I wish to address the court on several pivotal misunderstandings and misapplications of both the facts of my case and pertinent legal standards, notably those encapsulated in Fed. R. Civ. P. 45 and Fed. R. Civ. P. 37(a)(5)(A). First, it is essential to clarify the context of my non-response to the subpoena issued. The accusations levied against me, purporting that I have employed various email addresses to conceal my identity and obstruct justice, are not only unfounded but are being manipulatively presented without substantial evidence. This unsubstantiated claim is part of a broader pattern of harassment and retaliatory actions by MAA aimed at discrediting my whistleblower activities, which I have undertaken to expose significant malpractices within the company.

Regarding the legal grounds for the contempt motion, MAA's reliance on Rule 45 overlooks critical aspects of the rule that protect individuals from undue burdens. The subpoena demands, which entail the production of an exhaustive list of documents and communications, impose an unreasonable burden on me in contravention of Rule 45(d)(1), which stipulates that parties must avoid imposing undue burden or expense on a person subject to a subpoena. The extensive nature of the requested documents, including communications spanning several years and multiple digital platforms, is disproportionate to the needs of the case.

Moreover, the plaintiff's memorandum fails to acknowledge the protective scope of Rule 45(d)(3), which allows for a subpoena to be quashed or modified on the grounds of requiring disclosure of privileged matter or imposing an undue burden. I assert that the requested materials include privileged communications about my whistleblower activities, protected under various federal statutes, including the Sarbanes-Oxley Act.

Furthermore, the motion for sanctions under Rule 37(a)(5)(A) presupposes that my alleged non-compliance was without substantial justification. However, this is not the case; my resistance to the subpoena is grounded in legitimate legal concerns regarding the scope and relevance of the demanded materials, which I contend are overly broad and encroach upon protected whistleblower communications.

Document 21 - Argument Against "ORDER DIRECTING DEFENDANT DENNIS MICHAEL PHILIPSON TO SHOW CAUSE"

#### Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 119 of 121 PageID 1996

This directive to show cause for a potential default judgment reflects a continued pattern of procedural bias and oversight that fails to accommodate the complex and extenuating circumstances surrounding this case. Notably, the order presumes non-compliance without adequate consideration of the substantive legal defenses and procedural safeguards that I am entitled to under the Federal Rules of Civil Procedure and relevant local court rules for the Western District of Tennessee.

The premise is to issue a default judgment under Fed. R. Civ. P. 55(a) is contingent upon an apparent failure to "otherwise defend," yet this standard must be interpreted within the broader context of justice and equity. It is imperative to recognize that my ability to respond effectively has been hampered not by disregarding this Court's processes but by a series of aggressive and arguably unethical legal maneuvers by Mid-America Apartment Communities, Inc. (MAA). These actions include overly broad and burdensome discovery requests that verge on harassment, ostensibly designed to sideline my response capabilities rather than to elucidate facts pertinent to the litigation.

Moreover, it is essential to highlight the strategic application of Rule 12(a)(1)(A), which necessitates a response within 21 days after being served with a summons and complaint. While technically compliance with this timeline has faltered, the interpretation of this rule should not be devoid of a contextual understanding of the tactics employed by the plaintiff to complicate and obfuscate the requisite response process. The equitable doctrine of laches, as outlined in the annotations to the Rules and applicable case law, supports a defense against actions that disadvantage a party due to dilatory tactics by the opposition.

Additionally, there was an invocation of sanctions under the Fed. R. Civ. P. 37(b)(2)(A) for failure to obey a discovery order presupposes that all procedural and substantive defenses have been exhausted or are unavailable, which is not the case here. I maintain that the discovery demands made by MAA are disproportionate and venture into areas protected by whistleblower statutes, which shield my disclosures and associated documents from retaliatory examination or exposure.

# Document 21 - Argument Against "ORDER DIRECTING DEFENDANT DENNIS MICHAEL PHILIPSON TO SHOW CAUSE"

The directive issued by this Court, which precipitates a show cause for default judgment, starkly demonstrates the systemic bias that undermines the integrity of this judicial process. Regrettably, this approach underscores a concerning trend within the Western District of Tennessee's handling of this case, reflecting a prejudicial alignment with plaintiff Mid-America Apartment Communities, Inc. (MAA) incompatible with the principles of equitable justice.

The Order disregards crucial context, specifically the obstructive legal strategies employed by MAA, designed not only to impede my defensive capabilities but to leverage the court's mechanisms as tools of retaliation against my whistleblower activities. Such tactics by MAA, which include excessive and invasive discovery demands, are not aimed at clarifying the issues at hand but rather at burdening me to the point of default. This misuse of process should be apparent to the Court and warrants scrutiny rather than acquiescence to MAA's litigious agenda.

Under the Federal Rules of Civil Procedure, particularly Rule 55, the court should only entertain a motion for default when there is clear, incontrovertible evidence of disregard for the court's directives. The narrative that I have neglected my responsibilities to respond to is a gross misrepresentation shaped by MAA's strategic litigation practices. It is essential to recognize that the complexities involved in responding to MAA's demands directly result from their tactical litigation approach, which includes timing filings to disadvantage the defense and skewing the portrayal of my actions and intents. Case 2:23-cv-02186-SHL-cgc Document 106 Filed 06/24/24 Page 121 of 121 PageID 1998

Additionally, as hinted at in the Order, the application of sanctions or contempt lacks a balanced consideration of MAA's ongoing aggressive litigation posture, which is fundamentally at odds with the ethical obligations of fair play and justice. Under the circumstances described, such punitive measures do not merely threaten the equitable resolution of disputes but embolden corporate plaintiffs like MAA to use the courts as battlegrounds for silencing dissent and whistleblowing.

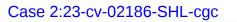
> Respectfully submitted, S/Dennis Philipson, Pro Se Defendant 6178 Castletown Way, Alexandria, VA 22310 dphilipson1982@yahoo.com **Dated: June 24, 2024**

Case 2:23-cv-02186-SHL-cgc

Document 106-1 PageID 1999

Exhibit A



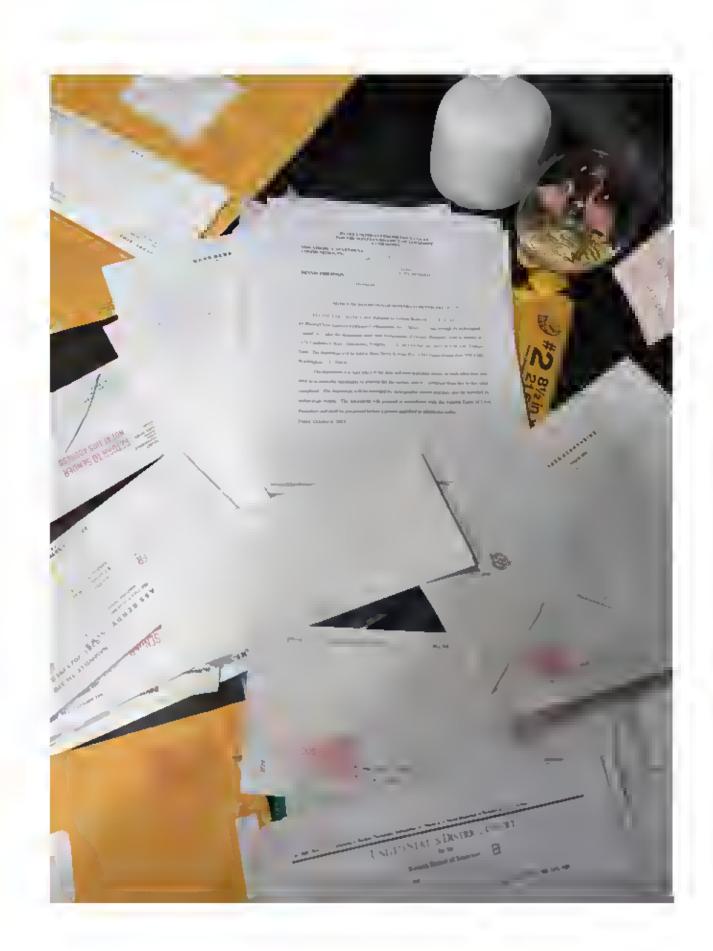


### Document 106-1 Filed 06/24/24 Page 2 of 7 PageID 2000



Case 2:23-cv-02186-SHL-cgc

Document 106-1 Filed 06/24/24 Page 3 of 7 PageID 2001





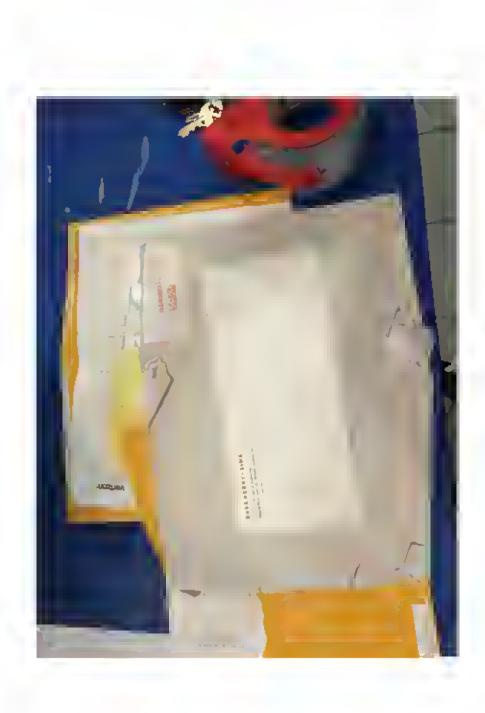
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## **Exhibit B**

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# Exhibit C



### Document 106-3 Filed 06/24/24 Page 2 of 5 PageID 2009



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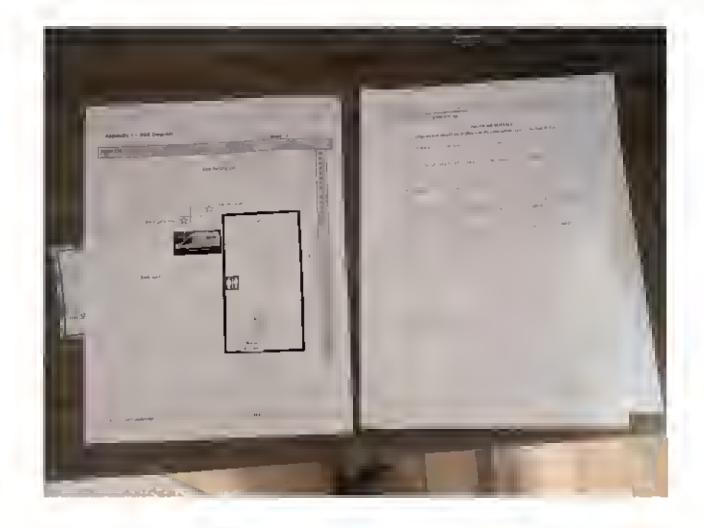
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Case 2:23-cv-02186-SHL-cgc

Case 2:23-cv-02186-SHL-cgc Document 106-3 Filed 06/24/24 Page 5 of 5 PageID 2012



Please find the exhibits detailed below:

1) Letter from Sandy Garrett, Chief Disciplinary Counsel, Board of Professional Responsibility of the Supreme Court of Tennessee – No confirmation received regarding the receipt of the materials.

2) Docket 2-24-cv-02199-SHL-atc, involving Michael Kapellas and Paige Mills.

3) Metadata indicating Michael Kapellas as the author/creator of several orders against me.

In light of these considerations, I assert that this FOIA request meets the criteria for expedited processing as outlined in 5 U.S.C. § 552(a)(6)(E)(i)(II). The potential loss of substantial due process rights and the urgent need to restore public confidence in the integrity of judicial proceedings make it imperative that this request be processed as quickly as possible.

Sincerely,

### 

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

AMERICAN CLOTHING EXPRESS, INC., PORTIA & SCARLETT, LLC, and P&S AUS PTY LTD,	) ) )
Plaintiffs,	)
V.	)
JOVANI FASHION, LTD.,	)
Defendant.	)

No. 2:24-cv-02199-SHL-atc

### ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' COMPLAINT

Before the Court is Defendant Jovani Fashion, Ltd.'s ("Jovani") Unopposed Motion and Memorandum for Extension of Time to Respond to Plaintiffs' Complaint, filed April 16, 2024. (ECF No. 19.) In the motion, Jovani seeks to extend the deadline for its responsive pleading from April 23, 2024, to May 10, 2024. (Id. at PageID 163–64.) Jovani's counsel indicates that they have recently been retained in this matter and that they need an extension to allow sufficient time to investigate and evaluate Plaintiffs' claims. (Id.)

For good cause shown, the motion is **GRANTED**. Defendant shall have until May 10,

2024, in which to file its responsive pleading.

IT IS SO ORDERED, this 16th day of April, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

### 

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

AMERICAN CLOTHING EXPRESS, INC., PORTIA & SCARLETT, LLC, and P&S AUS PTY LTD,	) ) )
Plaintiffs,	)
V.	)
JOVANI FASHION, LTD.,	)
Defendant.	)

No. 2:24-cv-02199-SHL-atc

### ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR LIMITED AND EXPEDITED DISCOVERY AND SETTING SCHEDULING CONFERENCE

Before the Court is Plaintiff American Clothing Express, Inc., Portia & Scarlett, LLC, and P&S Aus Pty Ltd's Motion for Limited and Expedited Discovery, filed April 1, 2024. (ECF No. 11.) In the motion, Plaintiffs seek certain limited discovery from Defendant Jovani Fashion, Ltd., "that would help the parties present a full picture of all relevant conduct and information to this Court during the hearing on Plaintiffs' Motion for Preliminary Injunction." (<u>Id.</u> at PageID 122.) On April 15, 2024, Defendant filed its response to the motion, in which it indicated that the Parties "have conferred regarding the Motion and, subject to the Court's approval, have agreed on certain expedited discovery to be conducted by both plaintiffs and defendant." (ECF No. 16 at PageID 152.)

The Court **GRANTS THE MOTION IN PART**, consistent with that agreement and the following terms:

### Case 22:23-02-02-02-02-02-03-15 Hattecgloocuboenin1ent El0ed404/1F51/2d4 067/2d4/222 of 22 age adje of 01.2.54 Page ID 2016

1. Defendant shall serve responses to Plaintiffs' First Request for Production of Documents, which were attached to Plaintiffs' Motion for Limited and Expedited Discovery as Exhibit A, by May 20, 2024.

2. Defendant shall be permitted to serve Requests for Production related to the issues presented in Plaintiffs' motion for preliminary injunction by April 22, 2024, which requests shall be answered by Plaintiffs within thirty days of service thereof.

3. Plaintiffs and Defendant shall cooperate in the scheduling of depositions pursuant to Federal Rule of Civil Procedure 30(b)(6) promptly after responses to the above-referenced requests for production of documents are served.

The Court will set a briefing schedule on Plaintiffs' Motion for Injunctive Relief and a Preliminary Injunction as well as all other deadlines in this matter at an in-person scheduling conference to be held at **11:00 a.m. Thursday, May 30, 2024.** 

The remaining relief sought in Plaintiffs' motion, including the request to issue Letters of Request for International Judicial Assistance, is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 15th day of April, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE Document 106-4 PageID 2017

Michael Kapellas Orders:

40 – 9/7/2023 - ORDER DENYING MOTION TO RESCHEDULE SCHEDULING CONFERENCE

57 – 10/4/2023 - ORDER REQUIRING PLAINTIFF TO FILE NOTICE

60 – 10/5/2023 - ORDER DENYING MOTION TO COMPEL AND MOTION FOR EXPEDITED DISCOVERY OF SUBPOENA RESPONSES AND ITEMIZATION OF DAMAGES

67 – 11/1/2023 - ORDER GRANTING MOTION FOR PROTECTIVE ORDER (Same day as Attorney General lawsuit against RealPage and MAA announced)

69 – 11/6/2023 - ORDER DENYING MOTION TO DISMISS (appears to be written by opposing counsel, against local court rules)

90 – 2/8/24 - ORDER FOR DEFENDANT TO SHOW CAUSE

91 – 2/13/24 - ORDER FOR DEFENDANT TO SHOW CAUSE

94 – 3/19/24 - ORDER DENYING AS MOOT PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS, GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, DENYING DEFENDANT'S REQUEST TO CONTINUE MEDIATION, REQUIRING DEFENDANT TO RESPOND TO MOTION FOR SANCTIONS OF JUDGMENT AND PERMANENT INJUNCTION, AND FINDING DEFENDANT IN CONTEMPT (Stating an arrest warrant will be issued for me and I will be held until I face contempt charges).

4/15/24 – The Court will move forward on ruling on ECF <u>92</u> Plaintiff's Motion for Sanctions of Judgment and Permanent Injunction.

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Authorg (/meta/Author)	Michael Kapellas

Case 2:23-cv-02186-SHL-cgc Document 106-4 Filed 06/24/24 Page 11 of 12 PageID 2023

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### Michael Kapellas

Michael Kapellas

August 31, 2020

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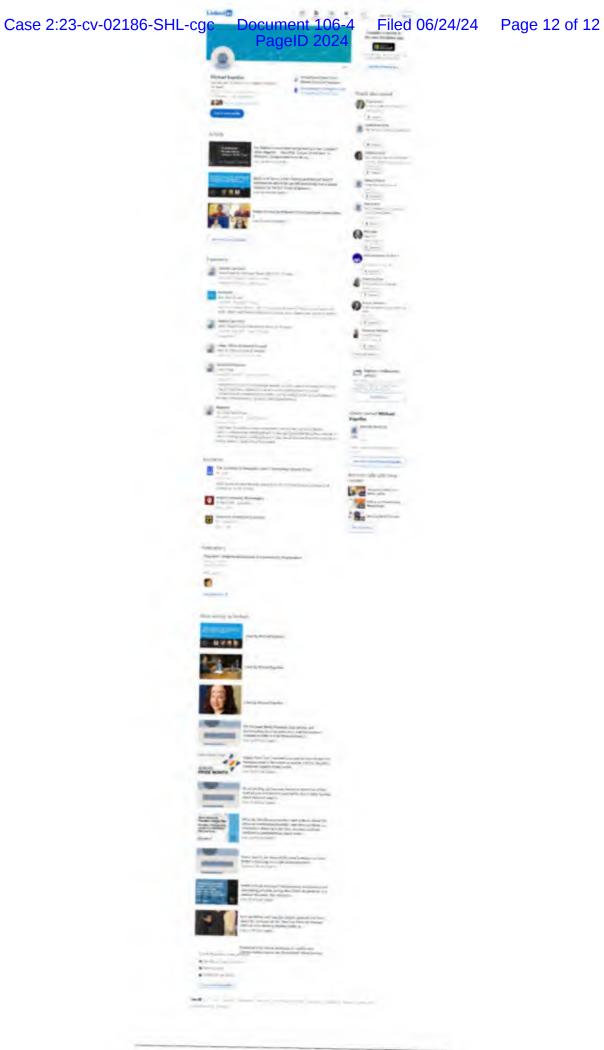




**包**Network

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Document 106-5 Filed 06/24/24 Page 1 of 10 PageID 2025

## **Exhibit E**

Document 106-5 PageID 2026

Filed 06/24/24 Page 2 of 10

## **Exhibit A**

From: Sent: To: Subject: Attachments: google-legal-support@google.com Tuesday, May 23, 2023 4 58 PM phillydee100@gmail.com Re: Google Internal Ref: No. 33616458 Order Denying Philipson's Motion to Quash Subpoena pdf; Subpoena dated 2024.04 06 pdf

Hello,

Thank you for your emails. Google has received the attached Order dated May 16, 2023, requiring Google's production of documents. Because Google has received compulsory legal process, Google intends to respond to the attached subpoena and may produce responsive non-content documents by May 30, 2023.

Regards, Google Legal Investigations Support

On Wed, May 17, 2023 at 16:53 UTC phillydee100@gmail.com wrote: Good afternoon,

Following up on this? Can I please have a copy of the subpoend that was originally sent to me

Thank you...

On Sat, Apr 29, 2023, 1:43 PM phillydee100 <phillydee100@gmail.com> wrote: Good afternoon,

Can I please have a copy of the subpoend that Google sent me last week regarding Mphillydgmail com and Phillydee100@gmail com? I have misplaced this after I sent it to the SEC.

What was filed with the court was different than the one I was sent. Fattached the one filed in court

Thank you very much for your assistance

Document 106-5 Filed PageID 2027

AO 888. (Rev. 12/13) Subpoona to Produce Documents, Information, or Objects or to Pennit Inspection of Pretunes in a Civil Action

UNITED STATE	S DISTRICT COURT
Western Dist	rict of Tennessee
Mid-America Apartment Communities, Inc.	2
Plantiĝ V. John Doe 1 John Doe 2	) ) Civil Action No. 2 23-cv-02186 )
OR TO PERMIT INSPECTION	) MENTS, INFORMATION, OR OBJECTS OF PREMISES IN A CIVIL ACTION provertion Service Company
Production YOU ARE COMMANDED to pro documents, electronically stored information, or objects, material:	e, Suite 150N, Sacramento CA 95833 a whom this subpoend is directed) duce at the time, date, and place set forth below the following and to permit inspection, copying, testing, or sampling of the
See Attached Exhibit A	

Place: Bass, Berry & Sims PLC, Attn. Paige Mills	Date and Tune:
150 3rd Ave S	4/27/2023 5-00 p m CSΓ
Nashville, TN 37201; pmlils@bassberry.com	

□ Inspection of Premises YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it

Place.	Date and Time:	L
		-
		Į

The following provisions of Fed R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance, Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(c) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

ÓR

Date. 04/06/2023

CLERK OF COURT

Daig Mills

Signature of Clerk or Deputy Clerk

Attorney a signature

The name, address, e-mail address, and telephone number of the attorney representing (name of parts)

Mid-America Apartment Communities, Inc.\_\_\_\_\_\_, who issues or requests this subport, are

Page Mills, Bass, Berry, Sims PLC, 150 Third Ave, S, Suite 2800, Nashville, TN 37201; (615) 742 -8200, mills@bassbarry.com

### Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoent must be served on each party in this case before it is served on the person to whom it is directed. Fed\_R Civ. P. 45(a)(4).

## Case 2:23-cv-02186-SHL-cgc Document 106-5 Filed 06/24/24 Page 4 of 10 PageID 2028

AO 88B (Rev. 12/13) Subposes to Produce Documents, Information, or Objects of to Permit Inspection of Premises in a Circli Action (Page 2)

Civil Action No. 2 23-cv-02186

### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and rule, if any)

on (date)

I served the subpoena by delivering a copy to the named person as follows:

OR (date) ; Or

I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$\_\_\_\_\_

My tees are \$ for travel and \$ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date

Server's signature

\_\_\_\_\_

Printed name and title

Server's address

Additional information regarding attempted service, etc.;

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT , COMMUNITIES, INC.	)
Plaintiff,	)
v	) ) Docket No. 2:23-cv-02186 ) JURY DEMAND
JOHN DOE 1 AND JOHN DOE 2,	)
Defendants.	)
	)

### GOOGLE SUBPOENA ATTACHMENT A

Please disclose the basic subscriber records (as set forth below at A-F) for the following three

Gmail accounts and three websites:

- mphillyd@gmail.com
- phillydee100@gmail.com
- timmy.argo75@gmail.com
- maafraud.com
- maa.apartments
- maaapartments.com

(A) name;

(B) address;

I affirm that these two email addresses belong to me. However, I maintain reservations regarding the adequacy of the grounds upon which they were subpoeneed. Furthermore, I am perplexed by MAA's inquiry into my intention to seek quashing or suppression of these email addresses.

(C) local and long distance telephone connection records, or records of session times and

durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number)

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Document 106-5 Filed 06/24/24 Page 7 of 10 PageID 2031

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

### UNITED STATES DISTRICT COURT

for the

)

)

)

)

Western District of Tennessee

Mid-America Apartment Communities, Inc.

**Plaintiff** 

John Doe 1 John Doe 2 Civil Action No. 2:23-cv-02186

Defendant

### SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Google LLC - Corporation Service Company 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attached Exhibit A

Place: Bass, Berry & Sims PLC; Attn: Paige Mills	Date and Time:
150 3rd Ave. S.	4/27/2023 5:00 p.m. CST
Nashville, TN 37201; pmills@bassberry.com	•

□ Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

OR

Date: 04/06/2023

CLERK OF COURT

Paige Mulls

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Mid-America Apartment Communities, Inc. , who issues or requests this subpoena, are:

Paige Mills, Bass, Berry Sims PLC, 150 Third Ave. S., Suite 2800, Nashville, TN 37201; (615) 742 -6200; pmills@bassberry.com

### Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Case 2:23-cv-02186-SHL-cgc	Document 106-5	Filed 06/24/24	Page 8 of 10
	PageID 2032		•

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AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

-

Civil Action No. 2:23-cv-02186

-

### **PROOF OF SERVICE**

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

(date)	·		
$\Box$ I served the su	bpoena by delivering a copy to the nar	ned person as follows:	
		on (date) ;	or
$\Box$ I returned the s	subpoena unexecuted because:		
tendered to the wi		States, or one of its officers or agents, I e, and the mileage allowed by law, in the	
y fees are \$	for travel and \$	for services, for a total of \$	0.00
l declare unde <b>r pe</b>	nalty of perjury that this information i	s true.	
te:		Server's signature	
		server's signature	
		Printed name and title	
		Server's address	

Additional information regarding attempted service, etc.:

Document 106-5 PageID 2033

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

### Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoend may command:
 (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

### (2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoent to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

### (g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT, COMMUNITIES, INC.	)
Plaintiff,	)
v.	) ) Docket No. 2:23-cv-02186 ) JURY DEMAND
JOHN DOE 1 AND JOHN DOE 2,	)
Defendants.	) ) )
	)

### **GOOGLE SUBPOENA ATTACHMENT A**

Google shall disclose the following basic subscriber records for Gmail account "timmy.argo75@gmail.com" and websites "maafraud.com", "maa.apartments" and "maaapartments.com":

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number)

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

)

<b>MID-AMERICA APARTMENT</b> <b>COMMUNITIES, INC</b> . Plaintiff,			
v.			
DENNIS PHILIPSON			
	Defendant.		

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

### MOTION FOR BRIEF EXTENSION TO FILE SUPPLEMENTAL DESCRIPTION OF DAMAGES

Mid-America Apartment Communities, Inc. ("MAA") respectfully requests a brief extension to file the Supplemental Description of Damages required by this Court's Order of June 13, 2024 (Dkt.102). In support of its Motion, MAA states that it requires additional time due to the press of other matters, the travel schedule of counsel, and the schedule and availability of counsel that will be providing a supporting Declaration. Due to the upcoming holiday, MAA requests until July 8, 2024, to file its Supplemental Description of Damages.

For the foregoing reasons, MAA respectfully requests that it have until July 8, 2024, to supplement its description of damages.

Respectfully Submitted,

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3<sup>rd</sup> Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 pmills@bassberry.com

/s/ John Golwen John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 jgolwen@bassberry.com Jordan.thomas@bassberry.com

Counsel for MAA

Document 108 Filed 06/27/24 Page 3 of 3 PageID 2037

### **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by the Court's ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way P.O. Box 30142 Alexandria, Virginia 22310 Phillydee100@gmail.com dphilipson1982@yahoo.com

This 27th Day of June, 2024.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

Case 2:23-cv-02186-SHL-cg	С
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Document 109 Filed 06/27/24 Page 1 of 2 PageID 2038

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
V.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

### ORDER GRANTING IN PART MOTION FOR BRIEF EXTENSION TO FILE SUPPLEMENTAL DESCRIPTION OF DAMAGES

Before the Court is Plaintiff Mid-America Apartment Communities, Inc. ("MAA") Motion for Brief Extension to File Supplemental Description of Damages, filed June 27, 2024. (ECF No. 108.) On June 13, 2024, the Court entered an Order Requiring Supplementation, in which it ordered MAA to supplement its notice of damages with certain information by June 27, 2024. (See ECF No. 102.) MAA's Motion seeks to extend that deadline to July 8, 2024, based on "the press of other matters, the travel schedule of counsel, and the schedule and availability of counsel that will be providing a supporting Declaration." (ECF No. 108 at PageID 2035.) MAA does not indicate that it consulted with <u>pro se</u> Defendant Dennis Philipson about the relief it seeks, which it is required to do under Local Rule 7.2(a)(1)(B).

The Court notes that both the bases for the extension of time MAA seeks, as well as the fact that it was not going to be able to adhere to the Court's deadline, should have been apparent to it well before its deadline to submit its supplementation. Although this is the sort of routine extension that the Court would likely grant even in the presence of an objection by opposing counsel, or, in this instance, a party representing himself, given the timing, the last-minute nature

#### Case 2:23-cv-02186-SHL-cgc Document 109 Filed 06/27/24 Page 2 of 2 PageID 2039

of MAA's request, and the fact that MAA apparently did not consult with Mr. Philipson, MAA has placed the Court in the predicament that ruling on the Motion is necessary before the time runs under the Local Rules for Mr. Philipson to file his response to the Motion.

Given the foregoing, the Motion is **GRANTED IN PART**. MAA shall have until July 5, 2024, in which to file its supplementation.

IT IS SO ORDERED, this 27th day of June, 2024.

s/ Sheryl H. Lipman SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

Document 110 Filed 07/03/24 Page 1 of 4 PageID 2040

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

#### Plaintiff,

MID-AMERICA APARTMENT COMMUNITIES, INC (MAAI & MAA-PI)., MID-AMERICA APARTMENT COMNUNITIES, LLC., MID-AMERICA APARTMENTS L.P (MAA)

#### <u>Alabama</u>

CPSI, LLC CPSI-UCO Spanish Oaks, LLC CPSI-UCO, LLC Highway 31 Alabaster Two, LLC Highway 31 Alabaster, LLC Delaware 10th Apartments, LLC 1499 Massachusetts Avenue, Inc. 1499 Massachusetts Holding, LLC CC Daybreak, LLC CC Val Vista, LLC CC West Midtown, LLC Colonial Commercial Contracting, LLC Colonial Construction Services, LLC Heathrow 4, LLC MAA Alloy, LLC MAA Arkansas REIT, LLC MAA Holdings, LLC MAA WWARRS, LLC Post Carlyle II, LLC Sand Lake 2019, LLC Stone Ranch at Westover Hills, LLC

Florida MAA Westshore Exchange LLC

#### <u>Georgia</u>

3630 South Tower Residential, LLC 98 San Jac Holdings, LLC PAH Lender, LLC Park Land Development, LLC **PBP** Apartments, LLC PF Apartments, LLC PL Conservation, LLC Post 1499 Massachusetts, LLC Post Alexander II, LLC Post Asset Management, Inc. Post Carlyle I, LLC Post Centennial Park, LLC Post Corners, LLC Post Galleria, LLC Post Hyde Park, LLC Post Midtown Atlanta, LLC Post Midtown Square GP, LLC Post Midtown Square, L.P. Post Park, LLC Post Park Development, LLC Post Parkside at Wade II GP, LLC Post Parkside at Wade II, L.P. Post Services, LLC Post South End GP, LLC Post South End, L.P. Post Wade Tract M-2, L.P. **Rise Condominium Development, LLC** 

#### <u>Tennessee</u>

Brighter View Insurance Company, LLC Mid-America Apartments, L.P.

#### <u>Texas</u>

Akard-McKinney Investment Company, LLC MAA of Copper Ridge, Inc.

#### Notice of Appeal to the United States Court of Appeals for the Sixth Circuit

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

To the Clerk of the Court and all parties concerned:

Notice is hereby given that Dennis Michael Philipson, the Defendant in the above-captioned case, intends to appeal to the United States Court of Appeals for the Sixth Circuit from the final judgment entered in this action by the United States District Court for the Western District of Tennessee on May 6, 2024, and all interlocutory orders leading to the judgment. This notice is to inform the Court of the Defendant's intention to challenge the decision based on claims of judicial error, procedural irregularities, and violations of constitutional rights that critically affected the fairness and integrity of the trial proceedings.

The grounds for the forthcoming appeal include, but are not limited to:

- 1. Judicial Misconduct and Bias: The trial was marred by evident judicial misconduct and bias, where the presiding judge exhibited clear partiality towards the Plaintiff, disregarding standard judicial procedures and the fundamental principles of fairness. The involvement of the judicial law clerk, who previously worked with Plaintiff's law firm, raised unresolved conflicts of interest.
- 2. Procedural Irregularities and Abuse of Process: The court engaged in procedural irregularities,

including the mishandling of evidence and misuse of subpoenas, which undermined the integrity of the

judicial process. Key decisions were made without sufficient evidence, and the sanctions imposed were disproportionately severe and not supported by the facts of the case.

- 3. Violation of Constitutional Rights: The Defendant's constitutional rights, including the right to a fair trial and due process, were compromised. The court's failure to allow adequate time for preparation and response to the Plaintiff's motions denied the Defendant the opportunity to effectively participate in his defense.
- 4. Erroneous Legal Rulings: The court made several erroneous legal rulings, particularly concerning the application of the law regarding sanctions, permanent injunctions, and the interpretation of actions as constituting trademark infringement and cyber harassment.

The Defendant will proceed with filing the formal Notice of Appeal in accordance with the rules and timeline stipulated by the Federal Rules of Appellate Procedure.

Dated this 3rd day of July, 2024.

Respectfully submitted,

/s/ Dennis Michael Philipson

**Dennis Michael Philipson** 

Defendant, Pro Se

6178 Castleton Way

Alexandria, VA 22310

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of July, 2024, a true and correct copy of the foregoing Notice of Intent to Appeal was served via electronic mail and United States Postal Service upon the following:

*Counsel for Plaintiff:* Bass, Berry & Sims PLC

/s/ Paige Waldrop Mills

Paige Waldrop Mills, BPR. No. 016218

BASS, BERRY & SIMS PLC Suite 2800; 150 3rd Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200

pmills@bassberry.com

/s/ John Golwen\_\_\_\_\_

John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903

Fax: (615) 742-6293

jgolwen@bassberry.com Jordan.thomas@bassberry.com

Counsel for Mid-America Apartment Communities, LLC

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant, Pro Se

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APAR COMMUNITIES, INC.	ſMENT	)
,	Plaintiff,	) )
v.		)
DENNIS PHILIPSON		)
	Defendant.	)

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

#### SUPPLEMENTAL DECLARATION OF PAIGE WALDROP MILLS

I am of majority age and have first-hand knowledge of the facts set out below:

1. I am a licensed attorney in the State of Tennessee and in the Western District. I have practiced in Tennessee for more than thirty years. I am a member of the law firm, Bass, Berry & Sims. My firm has represented Plaintiff Mid-America Apartment Communities, Inc ("MAA") in this case.

2. On June 13, 2024, this Court issued an Order (Dkt. 102) seeking a supplemental response as to MAA's attorney fees in this matter.

3. To that end, I file this supplemental declaration.

4. As **Exhibit A** to this Supplemental Declaration will make clear, I have set out each task accomplished in this case, along with the hours each attorney or other timekeeper on the team spent on the task. Under each timekeeper's name across the top, I have set out the rates that applied to his or her work on this case. As noted in **Exhibit A**, my firm's rates increased in 2024 so the 2024 rate would have been applied to any work completed on a task after January 1, 2024. Because some tasks had work done on them in both years, for example, "Fact Gathering/Client Conferences and emails/Internal Conferences and Team Emails," the estimated cost of these tasks are

#### Case 2:23-cv-02186-SHL-cgc Document 111 Filed 07/05/24 Page 2 of 7 PageID 2045

approximate because different rates would have been used for the timekeeper, depending on when the work was performed. The estimated total cost of each task appears at the far right of the spreadsheet.

5. In some cases, the hours spent by a particular attorney on a task had to be estimated because the original time entry had "block billing" and was not set out on a per task basis. I personally went through each invoice and used my best judgment to divide the total hours spent and billed by each attorney into the appropriate task. For this reason, the hours applied (and thus the cost) of each task is to some degree an estimation but I believe that it is a reasonable and fair estimation based on a close review of the billing data.

6. I am a member of Bass, Berry & Sims and have practiced law in Nashville, Tennessee for nearly 31 years. My practice is centered in complex litigation, usually involving intellectual property, trade secret, and technology disputes. As shown on **Exhibit A**, my rate in 2023 for this dispute was \$610 per hour. My rate increased to \$675 per hour in 2024. To date, I worked a total of 400.7 hours on this matter.

7. John Golwen is also a member of the firm and has practiced law in Memphis for more than 30 years. His practice is centered on complex business litigation and he is chair of the firm's Business Disputes Practice Group. As set out in **Exhibit A**, Mr. Golwen's rate in 2023 was \$650 per hour and \$665 in 2024. Mr. Golwen worked a total of 80.7 hours on this matter.

Johnathan Nelson is a member of the firm that has practiced law in Memphis for
 15 years. His work centers around complex business disputes. His rate in 2023 was \$625 per hour.
 Mr. Nelson worked a total of .3 hours on this matter.

#### Case 2:23-cv-02186-SHL-cgc Document 111 Filed 07/05/24 Page 3 of 7 PageID 2046

9. Liat Martinez is an associate in Bass, Berry's Nashville office. Her practice is centered on intellectual property issues. Her rate for her work in this case was \$430 per hour. Ms. Martinez worked a total of 21.4 hours on this matter.

10. Jordan Thomas is a litigation associate in Bass, Berry's Memphis office. Her rate in 2023 was \$415 per hour. Her rate increased to \$470 per hour in 2024. To date, Ms. Thomas has worked a total of 70.9 hours on this matter.

11. Alex Agee is a litigation associate in Bass Berry's Memphis office. Her rate in 2024 was \$505 per hour. To date, Ms. Agee worked a total of 11.6 hours on this matter.

12. Bass, Berry's Litigation Technology Manager's rate was \$380 at the time he provided services on this matter. He worked 3.4 hours on this matter. Our firm's Litigation Technology Specialist's rate was \$295 in 2023 and \$320 in 2024. Our Litigation Technology Specialists worked a total of 3.4 hours on this matter.

Bass, Berry's paralegals billed at \$275 per hour in 2023 and \$300 per hour in 2024.Our paralegals worked a total of 72.7 hours on this matter.

14. The fees and expenses in this case were extensive because we were initially dealing with an anonymous threat actor who was difficult to identify and locate. The matter involved extensive work to determine Mr. Philipson's identity through voluminous third party discovery of at least 18 people/entities due to his use of a labyrinth of anonymous websites, false names, fake personas, bogus email addresses, phone numbers, and physical addresses. Virtually all of the subpoena recipients issued one or more rounds of objections that necessitated numerous rounds of responses, negotiations, and follow-ups in order to receive a production.

#### Case 2:23-cv-02186-SHL-cgc Document 111 Filed 07/05/24 Page 4 of 7 PageID 2047

15. Once the Defendant was identified as Mr. Philipson, he insisted on proceeding *pro se*, which drove up costs because he did not behave professionally or follow this Court's Local Rules or the Rules of Civil Procedure.

16. He never filed an Answer, which necessitated the filing of a Motion for Default. He ignored the discovery rules, refusing to provide the required Initial Disclosures, a response to his subpoena, or a response to the two sets of written discovery with which he was served. This resulted in MAA having to file Motions to Compel and/or Motions for Contempt, all of which could have been avoided if he had followed the Rules and/or this Court's orders.

17. Virtually nothing could be accomplished by agreement, or, if an agreement was reached, Mr. Philipson could not be counted on to comply with that agreement. By way of just one example of this, Mr. Philipson's deposition was set on a date he offered and agreed to, but he tried to renege over the weekend before the Monday on which his deposition was to occur, after plane tickets had been purchased and a hotel room booked. This resulted in several hours of attorney time being expended to address his baseless objections to the giving of a deposition, one of which was he didn't want to give his deposition because it appeared that it was going to be an "interrogation."

18. As the Court is aware, he frequently emailed the Court making accusations about counsel or making frivolous motions such as a "Motion for ADA Accommodation" or a "Motion for Expedited Discovery," despite the fact that the Court had already held a case management conference. All of this caused MAA to incur significant fees to address his antics.

19. MAA's Motion for Preliminary Injunction was particularly expensive to prepare because Mr. Philipson kept proliferating more and more websites and fake entities that spread defamatory content in numerous emails to thousands of MAA employees and others. He contacted

#### Case 2:23-cv-02186-SHL-cgc Document 111 Filed 07/05/24 Page 5 of 7 PageID 2048

numerous MAA properties, spreading defamatory information about MAA, and emailed confidential MAA information to the lawyers in unrelated litigation. His conduct had to be constantly monitored, documented and addressed.

20. Since the Court has granted permanent injunctive relief, Mr. Philipson has failed to comply with the injunction and insists upon repeatedly emailing MAA employees in violation of the injunction and filing numerous frivolous whistleblower complaints, all of which continue to drive up costs.

21. To date, the total amount of fees that MAA has incurred in this action are \$374,491. The costs to date are \$9,122.61.

22. As of the date of this Supplemental Declaration, MAA has now incurred a total of \$383,613.61 in attorney fees and costs.

23. The total amount of the fees and costs set forth in this Supplemental Declaration (\$374,491 and \$9,122.61, respectively) is greater that my previous Declaration (Dkt101-3) because MAA has continued to incur fees and expenses related to Mr. Philipson's conduct since that filing. For example, MAA has had to undertake the drafting of another contempt motion that will be filed in the next few days due to the behavior set forth in Paragraph 20.

24. As set forth in my original Declaration, based on my years of experience in practicing law in Tennessee, I think these fees are fair and reasonable given the work that this matter entailed.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing document is true and correct to the best of my information, knowledge, and belief.

Document 111 PageID 2049

Executed this 2<sup>nd</sup> day of July, 2024, at Nashville, Tennessee.

Daig Mills

Paige Mills

### **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by email, and regular mail:

Dennis Philipson 6178 Castletown Way PO Box 30142 Alexandria, Virginia 22310 Phillydee100@gmail.com dphilipson1982@yahoo.com

This 5th day of July, 2024.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills Document 111-1 Filed 07/05/24 Page 1 of 5 PageID 2051

# EXHIBIT A

## Case 2:23-cv-02186-SHL-cgc Document 111-1 Filed 07/05/24 Page 2 of 5 PageID 2052

	Paige Mills	John Golwen	Jonathan Nelson	Liat Martinez	Jordan Thomas	Alex Agee	Lit. Tech. Manager	Lit. Tech. Specialist	Paralegals	Hours per Task	Appx. Cost per Task*
2023 Rate		650	625	430	415		380				
2024 Rate	675	665			470	505		320	300		
Task Fact Gathering/Client Conferences and emails/Internal											
Conferences and team emails	24.5	14.1		1.9	3.2				1.3	45	\$26,613
Misc. Emails and correspondence to and from Dennis											
Philipson	2.9	1.4			1.1				1.4	6.8	\$3,521
Internal Case Management/Strategy/Organization/Case											
Administration	25.2	10.1			0.3				11.6	47.2	\$25,252
Case Management Conference (Draft case management order, conference with Defendant in advance)	4.5	1.6			1.6					7.7	\$4,449
Attention to Philipson's Motion to Reschedule and	1.5				0.9				0.4	2.0	¢1 200
response to same	1.5				0.9				0.4	2.8	\$1,399
Legal Research on various issues for various filings	15.4	0.4			5.9					21.7	\$12,103
Draft Cease and Desist Letters re: numerous infringing	3.7									3.7	\$2,257
domains	3.7									3.7	\$2,237
Instigate and manage UDRP Proceedings regarding numerous infringing domains using MAA marks, draft	20.4			8.6	0.2				1.2	30.4	\$16,555
complaints, amend complaint; participate in process, transfer domains after order awarding them to MAA, etc.	20.4			0.0	0.2				1.2		\$10,555
Draft federal complaint	11.5				0.3					11.8	\$7,140
Research and Draft Motion for Expedited											
Discovery/Respond to Order on same	4								1.6	5.6	\$2,880
Draft Notices of Appearance for team members		0.2			0.2				0.5	0.9	\$351
Research regarding alleged whistleblower issues/Consult											¢1.525
with employment counsel	2.5									2.5	\$1,525
Third party discovery –draft subpoenas to 18											
parties/Respond to Objections from each, some multiple											
times; Correspond with Recipient; review documents	51.9			4.6	1				17.7	75.2	\$38,920
produced; attention to document management											
											<b>*</b> < 0.00
Respond to Defendant's Motion to Dismiss	3	1.2			10				0.5	14.7	\$6,898
Respond to Defendant's Amended Motion to Dismiss	1.5	0.4			1.3			0.3		7	\$2,766
Draft Initial Disclosures	3.9								0.9		\$2,627
Address Philipson's Failure to Serve Initial Disclosures	0.4				0.2					0.4	
Draft First Set of Written Discovery to Philipson	2.3				0.2					2.7	\$1,608 \$1,425
Draft Second Set of Written Discovery to Philipson Respond to Philipson's Discovery Requests –	2.2				0.2					2.4	\$1,423
Collect/Review/Produce Documents; respond to his	16.8						1		1.3	19.1	\$10,986
numerous questions/complaints	10.0						· ·		1.5	19.1	\$10,980
Expert Consultation – Plaintiff located and hired											
cybersecurity expert (Johnathan Bridbord of FTI) to help											
identify John Doe (Philipson) who used multiple fake	15.1			3.8			2.4			21.3	\$11,757
personas/email addresses/spoofed phone numbers/vpns,										_	. ,
etc. to hide his identity											
Expert Report – work with expert to produce expert									1.2	10.0	¢( 031
report	9.3								1.3	10.6	\$6,031
Respond to Philipson Motion to Quash/Draft supporting	11	1.3			3.4			2.4		18.1	\$9,674
declaration		1.3			3.4			2.4		18.1	\$9,074
Prepare Motion to Compel Response to Subpoena	3.9	1.1							2	7	\$3,644
Prepare Amended Complaint	5.5	2.3		0.6	0.2				0.9	9.5	\$5,439
Draft and File Motion for Default; team discussions/client	2.6	0.8			1.4					4.8	\$2,687
discussions around same	2.0	0.8			1.4					4.8	\$2,087

## Case 2:23-cv-02186-SHL-cgc Document 111-1 Filed 07/05/24 Page 3 of 5 PageID 2053

Phillpear Motion for Excedence Different Policy         1.3         0.3         0.4         0.4         2.2         51.23           Cauce Crient or Policy         Notes for a Policy         1.6         0.6         0.4         1.3         3.8         \$1.839           Cauce Crient or Policy         Actions to String to present of the string to preparing         0.4         0.4         0.4         2.2         \$5.233           for same gather Accuracity as childs, trust Is and from 13.3.7         0.6         3.6         0.7         4.4         4.8         \$53.888           Out the dopolition, trust and user filting         6         0.4         0.1         7.4         \$4.195         \$5.499           Address Thilds for the dopolition of dopolition to dopolition to dopolition to lock and user filting         0.6         0.6         0.6         0.8         \$5.399           Repersibility, antroin to lock polition to dopolition to dopolition to dopolition to lock assents, ctr.         0.6         0.6         0.6         \$5.399           Repersibility, antroin to lock polition to dopolition to do	Motion for Protective Order/fruitless negotiations with Philipson regarding same	1.5	0.2			3.5			1	6.2	\$2,773
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# Case 2:23-cv-02186-SHL-cgc Document 111-1 Filed 07/05/24 Page 4 of 5 PageID 2054

Attention to/Discussion of Philipson's violation of injunction and obsessive and abusive whistleblower complaints	3.5	6.1								9.6	\$6,419
Contempt Petition	3.5	2.4				11.6				17.5	\$9,817
TOTAL NUMBER OF HOURS	400.7	80.7	0.3	21.4	70.9	11.6	3.4	3.4	72.7	665.1	
VALUE OF HOURS SPENT	\$252,676	\$53,133	\$188	\$9,202	\$30,678	\$5,858	\$1,292	\$1,046	\$20,420	\$374,491	

\*Cost is approximate due to some tasks overlapping from 2023 to 2024 in combination with annual rate increases

## Case 2:23-cv-02186-SHL-cgc Document 111-1 Filed 07/05/24 Page 5 of 5 PageID 2055

EMPLOYEE_NAME	EMPLOYEE_CODE	Hours	Fees	
McClanahan, Teresa W.	PARALEGAL		70.4	19,787.5
Gibson, R. M.	LIT. TECH MANAGER		3.4	1,292.0
Golwen, John S.	MEMBER		80.7	53,133.0
Mills, Paige W.	MEMBER		400.7	252,675.5
Nelson, Jonathan E.	MEMBER		0.3	187.5
Molina, Jorge M.	LIT. TECH SPECIALIST		3.4	1,045.5
Shelton, Taira M.	PARALEGAL/LEGAL ASSI	STA	2.3	632.5
Agee, Ann A.	Associate		11.6	5,858.0
Martinez, Liat S.	ASSOCIATE		21.4	9,202.0
Thomas, Jordan E.	LAW CLERK		70.9	30,677.5
			665.1	374,491.00
	Differer	nce	-	13,757.50

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

#### MID-AMERICA APARTMENT COMMUNITIES, INC.,

Plaintiff,

v.

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

**DENNIS PHILIPSON,** 

Defendant.

### DECLARATION OF RANDALL D. NOEL

I am of majority age and have first-hand knowledge of the facts set out below:

1. I am a licensed attorney in the State of Tennessee and Mississippi and am admitted to practice before all U.S. District Courts in Tennessee, Mississippi and Arkansas, I am also admitted to practice before the U.S. Courts of Appeal for the Fifth and Sixth Circuits, and the U.S. Supreme Court. I have practiced in Memphis, Tennessee for more than forty years. I am a member of the law firm, Butler Snow LLP. My law firm website resume is attached.

2. In my law practice, I have represented public and private companies across an array of industries—including manufacturing, healthcare, financial services, real estate, retail and energy - for resolution of their commercial disputes.

3. I have extensive experience in state and federal court, including in cases involving injunctive relief and business torts as well as cyber and online activities akin to those at issue in this action. I have had occasion to litigate substantial claims with a pro se party and am familiar with some of the unique challenges involved.

#### Case 2:23-cv-02186-SHL-cgc Document 112 Filed 07/05/24 Page 2 of 7 PageID 2057

4. In the course of my practice, I have developed familiarity with the billing practices and prevailing market rates for attorneys practicing in the area of complex civil litigation in Memphis, Tennessee. I am also generally familiar with the number of hours that may be reasonably required to litigate such cases.

5. I am familiar with the firm Bass, Berry & Sims, and over many years I have known and worked with several of the partners in the firm's Memphis and Nashville offices including John Golwen, with whom I have practiced law as a partner at our former firm.

6. I have been provided with the following documents related to this matter:

- The Docket Sheet for this Case
- The MAA Description of Damages and supporting affidavits
- The Supplemental Declaration of Paige Mills, including Exhibit A
- Selected Pleadings, Including the First Amended Complaint, Motion for Contempt, Order Granting Motions for Sanctions of Judgment and Granting in Part Motion For Permanent Injunction; Order Denying Motion to Compel and Motion for Expedited Discovery of Subpoena Responses and Itemization of Damages
- Order Requiring Supplementation (Dkt. 102)
- Bass, Berry & Sims billing records for this case

7. Based on a review of the docket sheet, pertinent pleadings and orders of this Court, and Exhibit A to Paige Mills' Supplemental Declaration, I am aware that this matter involved at least the following tasks:

• the drafting of the original Complaint against two "John Does."

- the drafting of a Motion for Expedited Discovery in order to learn the identity of the John Doe who used dozens of aliases, false email accounts, and fake phone numbers to conceal his identity and infringe on the Plaintiff's trademarks.
- the taking of extensive discovery of numerous third parties, including issuing at least 18 subpoenas to various internet companies and financial institutions to determine the identity of John Doe and responding to numerous objections made by the third parties to the issued subpoenas.
- locating and working with an expert with sufficient expertise to interpret and direct the discovery efforts.
- the institution of several UDRP proceedings to obtain possession of the infringing domains responding to numerous objections made by the third parties to the issued subpoenas;
- responding to Mr, Philipson's Motion to Quash, which was denied;
- amending the Complaint to specifically name Dennis Philipson as John Doe and add new facts and theories;
- filing a Motion for Default due to Mr. Philipson's failure to answer the complaint;
- the drafting and issuance of two sets of written discovery to Philipson;
- the filing of a Motion to Compel and Motions for Contempt related to Philipson's failure to respond to discovery;
- Addressing Philipson's Motion to Dismiss, which was denied;

- responding or otherwise attending to motions and numerous arguments raised by Philipson, such as his Motion for ADA Accommodation, his Motion for Expedited Discovery once discovery had opened, his failure to agree to a reasonable protective order, his complaints about the subpoenas issued, and his last-minute efforts to refuse to attend his deposition, all of which required briefing;
- preparing an expert report that explained how Philipson was identified through discovery of various internet service providers and on-line platforms;
- travel to Washington DC to take Philipson's deposition and prepare for same;
- attending to credit card applications filled out in counsel's name and supposed ethical complaints made by Philipson;
- preparing for and attending case management and status conferences that Philipson failed to attend;
- preparing for and attending a mediation conference that Philipson failed to attend;
- Attending to issues caused by Philipson's actions against MAA including the emailing of thousands of defamatory emails and setting up of several defamatory websites involving MAA and emailing its confidential policy manual to the entire defense group in unrelated litigation;
- researching and drafting the Motion for Preliminary Injunction and adducing the evidence for same;
- researching and drafting Motion for Sanction of Judgment and for Permanent Injunction;

- traveling to and attending of contempt hearing in Memphis;
- providing damages evidence as per the Court's order granting judgment;
- Further addressing of Philipson's failure to abide by the injunction by again sending multiple emails to MAA employees and the filing of numerous duplicative whistleblower complaints; and
- The drafting of a second motion for contempt for Philipson's failure to abide by the Court's Injunction, which I understand is on-going.

8. Based upon my professional experience and practice, it is my opinion that the rates charged by Ms. Mills, Mr. Golwen and their colleagues, as set forth in the Mills' Declarations and Exhibit A to Paige Mills' Supplemental Declaration, are within and represent the prevailing market rates for attorneys and other professionals in similar firms in the community with their background, experience and education practicing in this District during the relevant time periods for complex cases similar to this one. That these rates represent the prevailing rates in the community is supported by my interaction with other lawyers in this community and in some instances retaining their services for witnesses and other parties, and also upon my review of hourly rate information provided by similar firms for professionals providing similar services during the relevant time period of 2023 and 2024. It is my opinion that the number of hours spent by the Bass team were reasonable and necessary to achieve the outcome obtained.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing document is true and correct.

Document 112 Filed 07/05/24 Page 6 of 7 PageID 2061

Dated this 3rd day of July, 2024, at Memphis, Tennessee.

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RANDALL D. NOEL

### **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing was served on the individual below by email, and regular mail:

Dennis Philipson 6178 Castletown Way PO Box 30142 Alexandria, Virginia 22310 Phillydee100@gmail.com dphilipson1982@yahoo.com

This 5th day of July, 2024.

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

Document 112-1 PageID 2063

Filed 07/05/24 Page 1 of 6 UTLER/SNOWB



# RANDALL D. NOEL

P (901) 680-7346 F (901) 680-7201

randy noel@butlersnow.com

## OVERVIEW

Randy Noel is engaged in a civil trial practice with an emphasis on commercial, banking, antitrust, data security, and products liability matters

## PRACTICE AREAS

- Commercial Litigation
- Antitrust, Competition & Trade Regulation
- Financial Services Litigation
- Business Torts & Unfair Competition
- Data Privacy & Security

## EXPERIENCE

- Williams v. Union Carbide Corporation, 479 U.S. 992, 107 S.Ct. 591
- Boudra v. Humana Health Insurance Co. of Florida, Inc., 730 F.Supp. 1432.
- Schaeffer v. American Honda Motor Co., Inc., 976 F.Supp. 736.
- Farmer v. Taco Bell Corp., 242 B R. 435.
- Zaroufie v Lance, Inc., 2008 WL 2669105, W D. Tenn. (No. 07-2016).
- Municipal Securities, Inc. v. Insurance Company of North America, 829 F2d 7.
- Joe Brown, et al.v. Amsouth Bank and Regions Mortgage, 2018 WL 1319169 and 2948418
- Spec's Family Partners, Limited v. First Data Merchant Services LLC, 2019, 777 Fed. Appx. 785
- Memphis Biofuels, LLC v. Chickasew Nation Industries, LLC, 585 F3d 917
- Morris v. Canadian Imperial Bank of Commerce, 2009 WL 4931324 (Tenn Ct App. Dec 22, 2009).
- Coppock v. DaimlerChrysler Corp., 2007 WL 2471723, E.D. Tenn. (No. 4.06-CV-26).

Document 112-1 PageID 2064

Filed 07/05/24 Page 2 of 6 UTLER/SNOWB

- McConkey v McGhan Medical Corp., 144 F.Supp.2d 958.
- Williams v. Austin, 687 So.2d 766
- Carrington v. Methodist Medical Center, Inc., 740 So.2d 827
- Joe Brown, et al v. Amsouth Bank and Regions Mortgage, et al, 2016 WL 4271874
- Inventory Locator Service v. PartsBase Inc., WL 2179185.
- Inventory Locator Service v PartsBase, Jury verdict for world's largest internet marketer of aviation parts in 6 week trial of Computer Fraud and Abuse Act surt, and successfully defended \$20 million counterclaim.
- Saino v. LifeBlood, obtained dismissal of \$50 billion identity theft class action claim after removal pursuant to Class Action Fairness Act and defeat of remand efforts.
- *Miller, et al. v. Union Carbide Corp.*, obtained jury verdict for Union Carbide in 3 week trial of consolidated toxicity cases stemming from cellulose plant start up
- Southwind Country Club v PGA Tour, Obtained summary judgment in favor of PGA Tour in breach of contract action by members opposing dues payments during course and club renovations
- Spirou Group v Stoneville Pedigreed Seed Company, Represented publicly-traded cottonseed distributor in Geneva-based International arbitration of claim for breach of distribution agreement.
- John Doe, et al. v. Tenet Healthcare Corp., Defended Tenet Healthcare in 47 related suits filed on behalf of minors alleging improper child psychiatric care.
- Presley v. JP/Politikens HUS, et al., 2014 U.S. App. LEXIS 25061 Obtained dismissal of Danish publishing company and its editor from RICO related action brought by the alleged "real" Lisa Marie Presley
- Memphis Biofuels v. Chickasaw Nation Industries, Inc., Represented defendant in a \$20 million suit alleging breach of a biofuels production agreement. Obtained dismissal of the case in the U.S. District Court on the grounds of sovereign immunity, and dismissal was affirmed by the U.S. Court of Appeals for the Sixth Circuit.
- Zaroufie v. Lance, Inc., Defended Lance, Inc. in suit for breach of sandwich cracker production and distribution agreement, obtaining summary judgment and sanctions against plaintiff
- Willis v. American Honda Finance Corp., Defended American Honda in class action alleging discriminatory lending practices
- Ashcraft, et al. v. Kester, et al., Represented Northrop Grumman subsidiary in several multi-plaintiff toxicity cases which were dismissed following venue objections
- Brown v. Regions Mortgage, Obtained Sixth Circuit Court of Appeals, two Tennessee Court of Appeals and Bankruptcy Court decisions and dismissal of all claims against Regions Mortgage and Amsouth Bank in protracted real property litigation spanning 7 different courts in 11 actions
- McEwen v. Community Connect, Inc., Obtained dismissal for New York-based website of lawsuit alleging defamation and violation of Tennessee Personal Rights Protection Act
- *Willis, et al. v. Taco Bell,* Obtained summary judgments for Taco Bell in several companion cases alleging age discrimination

Document 112-1 PageID 2065

Filed 07/05/24 Page 3 of 6 UTLER/SNOWB

## DISTINCTIONS

- America's Top 100 Bet-the-Company Litigators
- Chambers USA: America's Leading Lawyers for Business
  - Litigation: General Commercial Tennessee, 2005-2017
- Best Lawyers in America@
  - Commercial Litigation, 2006-2024
  - Litigation Banking and Finance, 2011-2024
- Super Lawyers®
  - Mid-South Super Lawyers, 2006-2023
  - Top 100: Tennessee Super Lawyers, 2006, 2009–2013
  - Top 50: Memphis Super Lawyers, 2006-2007, 2009-2013
- Martindale-Hubbell®
  - AV®- Preeminent™ Peer Review Rated
- Business Tennessee Magazine, Top 150 Lawyers in Tennessee
- Lawdragon 3000, 2010
- Inside Memphis Business, Power Players List, Business Litigation
- Memphis Business Quarterly, The Player's List, Business Litigation.
- Memphis Business Quarterly, Power Players List.
- Who's Who in American Law
- Who's Who in America
- American Bar Foundation, Fellow
- Tennessee Bar Foundation, Fellow
- Memphis Bar Foundation, Fellow
- Leadership Memphis
- Association of International Law Firm Networks, Selected, 1,000 Leaders and Influencers in Legal Business List

Document 112-1 PageID 2066

Filed 07/05/24 Page 4 of 6

UTLER/SNOWB

## BAR ADMISSIONS

- Tennessee, 1979
- Mississippi, 1978
- U.S. District Courts
  - Arkansas, Eastern, Western
  - Mississippi: Northern, Southern
  - Tennessee: Western, Eastern, Middle
- U.S. Court of Appeals
  - 5th Circuit
  - 6th Circuit
- U.S. Supreme Court

## **EDUCATION**

- University of Mississippi, J.D., 1978
- University of Mississippi, B.S., Business Administration, with distinction, 1975

Document 112-1 PageID 2067

Filed 07/05/24 Page 5 of 6 UTLER/SNOWB

## ASSOCIATIONS

- American Counsel Association
  - President, 1996-1997
- Tennessee Bar Association
  - President, 1999-2000
- Tennessee Legal Community Foundation
  - President, 2000-2001
- Southern Conference of Bar Presidents
  - President, 1999-2000
- American Bar Association
  - House of Delegates, 2001-Present
    - State Delegate, 2008-2017
  - Board of Governors, 2017-2020
  - Litigation Section
    - Council Member, 2003-2006, 2017-2020
  - Standing Committee on Federal Judiciary
    - Chair, 2020-2021
    - Member, 2000-2003
- American Bar Foundation
  - Fellows
    - State Chair, 2010-2016
- 6th Circuit Judicial Conference
  - Life Member
- American Judicature Society
  - Board of Directors, 1992-1995
- ALI-ABA CLE Board
- Tennessee Supreme Court Historical Society
  - Board of Directors, 2005-2011
- International Association of Defense Counsel (IADC)
- Commission on the Future of Legal Services
- Fellows, ABA Young Lawyers Division
  - President, 2011

Document 112-1 PageID 2068

Filed 07/05/24 Page 6 of 6 UTLER/SNOWB

## **PAPERS, PRESENTATIONS & PUBLICATIONS**

- Co-Author, "A Practitioner's Guide to Class Actions, 2d. Ed.," Tennessee Chapter (ABA Publishing 2017).
- Author, Cybersecurity. The Bad Guys Can't Get That, Right?, Memphis Bar Association Bench Bar Meeting, Destin, Fla., September 2016.
- Author, Data Privacy the Transatlantic Perspective, Conference of the European Circuit of the Bar of England and Wales, Vienna, Austria, November 2012.
- Author, 'Data Privacy," Butler Snow's General Counsel Seminar, Memphis and Nashville, Tenn. and Jackson, Miss., 2013
- Author, 'Bribery and Foreign Corrupt Practices," American Counsel Association and European Circuit Conference Geneva, Switzerland, 2011
- Author, Trial Practice. Discovery," Tennessee Bar Association, 2009.
- Author, Managing Discovery of Electronically Stored Information, Tennessee Bar Association, Nashville, Tenn., 2007.
- Author, "E-Discovery Seminar," Bench/Bar Conference, Memphis Bar Association, Destin Fla., 2007.
- Author, "What's New in U.S. Litigation?," Outer Temple Chambers and ACA London, England, 2004.
- Author, "Tennessee Uniform Trade Secrets Act: Tennessee's Best Kept Secret," Lawyers Journal Club of Memphis, 2002
- Author, Amendments to Federal Rules of Civil Procedure,' Federal Bar Association and the U.S. District Court of WD of TN, 2001.
- Author, Products Liability Seminar," Tennessee Bar Association, 1997.
- Author, "Discovery Seminar Using and Responding to Interrogatories," Memphis Bar Association, 1987

## CIVIC INVOLVEMENT

- University of Mississippi Alumni Association, Law Alumni Chapter
  - Board of Directors, 2020–2023
- Governor's Council for Judicial Selection, 2015–2019
  - Chair, 2018
- Carnival Memphis
  - President, 1997
- Christ United Methodist Church
  - Administrative Board, Chair, 2011
- Access to Justice Campaign
  - Chair, 2006

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTM COMMUNITIES, INC.	<b>IENT</b> Plaintiff,
V.	
DENNIS PHILIPSON,	
	Defendant.

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

#### MAA'S MOTION FOR CONTEMPT FOR VIOLATING PERMANENT INJUNCTION AND INCORPORATED MEMORANDUM OF LAW

Plaintiff Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff"), by and through counsel, submits this Motion for Contempt For Violating Permanent Injunction and Incorporated Memorandum of Law (the "Motion for Contempt") against Defendant Dennis Philipson ("Philipson"). MAA seeks this relief due to his violation of this Court's Order Granting Motion for Sanctions of Judgment and Granting in Part Motion for Permanent Injunction (the "Injunction"). (Dkt. 97). As such, MAA respectfully requests that this Court grant the Motion for Contempt, award MAA its attorney's fees and costs associated with this Motion for Contempt, and award any other sanctions against Philipson that the Court deems appropriate.

#### **RELEVANT BACKGROUND**

As this Court is well aware, Philipson has failed to respond or comply with numerous Court orders in this case. As a result, this Court has previously found Philipson in contempt and warned him that if he continues to ignore Court orders, it may issue a warrant for his arrest to ensure his compliance. (Dkt. 94 at 21) ("If Mr. Philipson fails to appear as directed, the Court shall take all necessary action to bring him before the Court, including but not limited to issuing a warrant for his arrest and directing that he be held in custody pending a hearing on this matter."). Despite the Court's warning, Philipson has once again violated a Court order: the Injunction.

On March 6, 2024, MAA filed its Motion for Sanctions of Judgment and Permanent Injunction Against Philipson (the "Motion for Judgment"). (Dkt. 92). On May 6, 2024, this Court granted the Motion for Judgment and entered the Injunction. (Dkt. 97). In the Injunction, the Court

ordered, in pertinent part, that:

6. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from setting up social media accounts, whether on LinkedIn or otherwise, that falsely purport to be a MAA-sanctioned account or that use the MAA trademarks in a manner that is infringing or likely to cause confusion among MAA customers and the apartment rental marketplace . . .

8. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from contacting any individual MAA Person in-person or by phone, electronic mail, text message, social media, direct message, or any other method, without the express written consent of such person.

9. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261A... [and]

11. Defendant Philipson, whether under his own name or a false name, and those in active concert with him, are hereby enjoined and prohibited from using, posting, publicizing, disseminating, or distributing statements, including but not limited to e-mails, the leaving of a review on an internet platform, or assisting another in doing same, that state or imply . . . (j) that MAA or its counsel has committed wrongful or improper conduct by attempting to serve a subpoena in [t]his lawsuit.

(*Id.* at 8–10). Nothing in the Injunction limits Philipson's right to make whistleblowing complaints or otherwise communicate with a government agency. (*Id.* at 10). The Court directed its clerk to send Philipson a copy of the Injunction via regular mail and email. (*Id.* at 17–18).

After the Court granted the Injunction, Philipson violated Paragraphs 6, 8, 9, and 11(j) by sending emails to MAA employees, creating or maintaining certain social media accounts and submitting more than 55 complaints to MAA's internal whistleblower platform. Philipson has

# Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 3 of 12 PageID 2071

made over fifty-four attempts to send emails directly to MAA personnel since the Injunction was entered, including emails sent on May 21, May 31, June 13, and June 21, 2024. (See Declaration of Alex Tartera ("Decl.") at ¶ 3, attached hereto as **Exhibit A**; see also Decl., Ex. 1). For example, on June 13, 2024, Philipson sent an email to various Court personnel, including district court judges and their clerks, as well as MAA's counsel regarding this lawsuit, in which he falsely accused MAA and its counsel of intimidating and harassing him by serving "unjust subpoenas," of "potential antitrust violations, accounting irregularities, securities compliance issues," and of a potential conflict of interest concerning this Court's judicial clerk who previously worked for MAA's counsel's firm. (See June 13, 2024 D. Philipson Email at 1:23 PM, attached hereto as **Exhibit B**). Philipson sent an identical email—this time with attachments—to the same recipients later that same day. (See June 13, 2024 D. Philipson Email at 1:27 PM (without attachments), attached hereto as **Exhibit C** (together with Exhibit B, the "June 13th Emails")). Philipson copied at least sixteen different MAA email accounts on the June 13th Emails, including group email addresses that include various individual MAA employees. (Exhibit A at  $\P$  4). While some of Philipson's emails to MAA personnel were blocked by MAA's implementation of a content filter designed to block emails from Philipson, many MAA employees still received Philipson's emails because he used a new email address that was previously unknown to MAA. (Exhibit A at ¶ 7). The Court issued an Order Addressing Email to the Court on June 21, 2024, in which it addressed the issues Philipson raised in his June 13th Emails. (Dkt. 103). However, the Court has not addressed whether the June 13th Emails violate the Injunction. Philipson continues to email MAA employees and board members in violation of the Injunction.

Most recently, on July 3, Philipson, using one of his many aliases, Mason Behr, sent an email to MAA employees and MAA board members notifying them that he would be filing a

# Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 4 of 12 PageID 2072

lawsuit for retaliation against MAA. (*See* July 3, 2024 D. Philipson Email at 7:03 PM, attached hereto as **Exhibit D**). On July 4, Philipson emailed Tamara Fischer, an MAA employee eight times, attaching hundreds of pages of documents from when he was employed at MAA.<sup>1</sup> (*See* July 4, 2024 D. Philipson Emails (without attachments), attached hereto as **Exhibit E**). On July 5, he emailed MAA employees pictures of one of MAA's properties. The pictures are up close and not pulled from anywhere else. A zoom lens was not used because one can see the photographer's reflection in one of the photographs. If Philipson took these photos himself, he is in violation of Paragraph 10 of the Injunction, prohibiting him from coming within 500 feet of any MAA properties including parking structures. (*See* July 5, 2024 D. Philipson Email at 10:48 AM, attached hereto as **Exhibit F**).

On July 6, Philipson sent an email to MAA Persons from the email address tim.grimes@mymaa.online. (See July 6, 2024 D. Philipson Email at 11:58 AM, attached hereto as **Exhibit G**; see also **Exhibit A** at ¶ 6, **Exhibit 3**). Tom Grimes is the former MAA COO. The use of the name Tim Grimes is meant to confuse the recipients. Although it is addressed from Grimes, it is clearly Philipson, as the subject matter is similar to his other emails and he has used a variation of this name on several occasions in the past. That same day, Philipson made a complaint to the Tennessee Board of Professional Responsibility against John Golwen, counsel for MAA. He then forwarded the submission to the staff members of the Tennessee Bar Association noting he had a "concern regarding a potential conflict of interest and ethical violation involving John Golwen of Bass, Berry & Sims PLC and judicial law clerk Michael Kapellas, a former attorney with the same firm until 2020." The string of emails also includes an email to an unidentified email address thanking a Mr. Butler for his declaration. Philipson also forwarded the thread to an attorney at the

<sup>&</sup>lt;sup>1</sup> MAA notes that these documents would have been responsive to its Subpoena and two sets of Document Requests, but they were never produced.

# Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 5 of 12 PageID 2073

law firm Butler Snow, before finally forwarding the entire thread to John Golwen and Jordan Thomas, MAA's counsel, and to Rob Delpriore. (*See* July 6, 2024 D. Philipson Email at 5:19 PM, attached hereto as **Exhibit H**).

After the Injunction was entered, Philipson also created and/or maintained two social media accounts on LinkedIn that state he purportedly works for two different companies with names that contain the leading component of MAA's trademarks, "Mid-America" or a slight variation thereof. One of Philipson's LinkedIn profiles states that he is the EVP of Sexual Harassment & Racial Discrimination for Middle-American Fabrication Company (the "MAFC Profile"), and that he is an "[a]dvocate for employee rights, ethical company behavior and holding people accountable."<sup>2</sup> Philipson's other LinkedIn profile states that he is the EVP of Finance and EVP of Harassment & Disabilities for Mid American Mental Consultants (the "MAMC Profile," collectively with the MAFC Profile, the "LinkedIn Profiles"). The MAMC Profile states that Philipson "help[s] people grow their business illegally and while violating all types of securities and exchange laws."<sup>3</sup> Copies of the LinkedIn Profiles are collectively attached hereto as **Exhibit I**.

Additionally, since the Court entered the Injunction, Philipson has repeatedly abused MAA's whistleblower platform by submitting multiple entries—sometimes in a single day—that largely mirror the June 13th Emails, over 55 at last count. Some of the entries are addressed to persons outside of MAA, including the Dallas Express, the Tennessee Attorney General, the North Carolina Attorney General, and the Arizona Attorney General. While the Injunction does not prohibit Philipson from exercising his right to make whistleblowing complaints or otherwise communicate with *a government agency* (emphasis added), the repetitive allegations that

<sup>&</sup>lt;sup>2</sup> See Dennis Philipson, LINKEDIN, (last visited June 24, 2024).

<sup>&</sup>lt;sup>3</sup> See Dennis Philipson, LINKEDIN, (last visited June 24, 2024).

# Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 6 of 12 PageID 2074

Philipson makes are communications to MAA Persons (as defined in the Injunction) and violate the Injunction because they are made to MAA Persons and not to government agencies. The high volume and repetitive nature of these entries show that Philipson is not making them in good faith, but instead is using the platform to harass the recipients of the complaints – MAA Persons. MAA has been forced to expend time and money to repeatedly address Philipson's meritless claims. Copies of these whistleblower entries are collectively attached hereto as **Exhibit J**.

#### LAW AND ARGUMENT

#### I. Legal Standard

Courts have the power to enforce compliance with their orders through contempt. *See Elec. Workers Pension Tr. Fund of Loc. Union* [58, *IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003). A court may find a party in civil contempt for violating a permanent injunction. *See Gus's Franchisor, LLC v. Terrapin Rest. Partners, LLC*, No. 2:20-CV-2372-JPM-CGC, 2021 WL 918075, at \*3 (W.D. Tenn. Mar. 10, 2021). A court "may find a party in contempt to ensure the party's future compliance with the court's orders or to compensate the moving party for injuries caused by the nonmoving parties' noncompliance." *Id.* To hold a party in contempt, "the movant must produce clear and convincing evidence that shows that 'he violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Gary's Elec. Serv. Co.*, 340 F.3d at 379 (quoting *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir. 1987)). Once the movant establishes its *prima facie case*, the burden shifts to the nonmovant "who may defend by coming forward with evidence showing that he is presently unable to comply with the court's order." *Id.* To meet this burden, the nonmovant "must show categorically and in detail why he or she is unable to comply with the court's order."" Id. (quoting Rolex Watch U.S.A., Inc. v. Crowley, 74 F.3d 716, 720 (6th Cir. 1996)).

If the court finds a party in contempt in a civil proceeding, the court may sanction the offending party. *See Gus's Franchisor, LLC*, 2021 WL 918075, at \*3. In deciding what sanctions are appropriate, "courts are guided by the purposes of contempt: '(1) to coerce the defendant into compliance with the court's order; and (2) to compensate the movant for losses sustained." *Id.* (quoting *Dominic's Rest. Of Dayton, Inc. v. Mantia*, No. 3:09-CV-131, 2009 WL 10679457, at \*4 (S.D. Ohio May 14, 2009)). A court may compensate the moving party for the nonmovant's contempt in the form of a fine payable to the movant.<sup>4</sup> *Id.* A court may also require the nonmovant to pay the movant's attorney's fees and costs for bringing the motion. *Id.*; *see also id.* at \*6 ("The Court can . . . award . . . attorney's fees for a defendant's violation of a permanent injunction.") (citation omitted).

#### **II.** Philipson's Violation of the Injunction Warrants Sanctions

The emails Philipson sent to MAA personnel after the Court granted the Injunction clearly violate Paragraphs 8 and 11(j) of the Injunction, the LinkedIn Profiles violate Paragraph 6 of the Injunction, and the high volume of complaints sent through MAA's whistleblower platform violate Paragraph 9 of the Injunction. Philipson's violations have harmed MAA's relationship with its employees and customers and caused MAA to expend significant resources to prevent any further violations. Therefore, MAA is entitled to sanctions against Philipson.

First, Paragraph 8 of the Injunction prohibits Philipson from contacting any MAA person by email or otherwise without their written consent—regardless of whether the MAA employees

<sup>&</sup>lt;sup>4</sup> "This fine 'must of course be based upon evidence of complainant's actual loss,' and the complainant's 'right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy." *See Gus's Franchisor, LLC*, 2021 WL 918075, at \*3 (quoting *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947)).

### Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 8 of 12 PageID 2076

actually receive the emails—except through the appropriate whistleblower channels. (Dkt. 97 at 8-10). Philipson has made over fifty-four attempts to contact MAA employees personally since the Court entered the Injunction, including the June 13th Emails. (**Exhibit A** at ¶ 3; *see also* **Exhibits B, C, D, E, F, G**). While MAA's security system blocked some of Philipson's emails, many of the emails still went through to the intended MAA recipient. These actions are in direct violation of the Injunction.

Second, Philipson's June 13<sup>th</sup> and July 6 Emails also violate Paragraph 11(j) of the Injunction. Paragraph 11(j) of the Injunction prohibits Philipson from distributing statements that state or imply that MAA or its counsel committed wrongful or improper conduct by attempting to serve a subpoena in this lawsuit. (Dkt. 97 at 10). In his June 13th Emails, Philipson stated that MAA's counsel served "unjust subpoenas" and implied that the purpose of the subpoenas was to harass him. (**Exhibits B, C**). Philipson's July 6 Emails also reference unlawful subpoenas. (**Exhibit H**). Philipson's false statements regarding the subpoenas also violate the Injunction.

Third, the LinkedIn Profiles that Philipson created also violate Paragraph 6 of the Injunction. Paragraph 6 prohibits Philipson from setting up social media accounts "that falsely purport to be an MAA-sanctioned account or that use the MAA trademarks in a manner that is infringing *or likely to cause confusion* among MAA customers and the apartment rental marketplace." (Dkt. 97 at 8) (emphasis added). The fake LinkedIn Profiles that Philipson created use a key component of MAA's valuable marks ---MID-AMERICA or a close approximation of it ( i.e. "Middle-America Fabrication Company" and "Mid-American Mental Consultants"). (*See* **Exhibit I**). Given Philipson's long history of relentless harassment and his proliferation of fake websites and social media accounts using the MAA Marks in the marketplace, MAA's customers

### Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 9 of 12 PageID 2077

could easily be confused and think these LinkedIn profiles are associated with MAA because they use a key component of its marks.

Finally, Philipson's numerous complaints submitted through MAA's Whistleblower Portal violate Paragraph 9 of the Injunction. Paragraph 9 prohibits Philipson from "committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261A." (Dkt. 97 at 9). Section 2261A(2) prohibits persons "with the intent to harass [or] intimidate from using "any interactive computer service or electronic communication service or electronic communication system of interstate commerce" that causes "substantial emotional distress." 18 U.S.C. § 2261A(2)(B). Since the injunction, Philipson has submitted at least 55 entries (as of this filing) to MAA's whistleblower platform that largely mirror the language from the June 13 emails. On several occasions, Philipson has submitted multiple entries in a single day. It is clear from the high volume and repetitive nature of these entries that they are not made in good faith, but instead are designed to harass and intimidate MAA and MAA Persons. The entries submitted that are addressed to persons outside of MAA are further proof of Philipson's intent to harass and intimidate MAA. MAA has had to expend substantial resources to review and investigate these claims. Further, it is reasonably expected that this level of harassment would cause distress to MAA and MAA Persons. This harassment directly violates Paragraph 9 of this Court's Injunction.

Philipson's blatant and repeated disregard of the Injunction has harmed MAA. For example, MAA has been forced to expend valuable time and resources on cyber security to prevent Philipson from contacting its employees further. MAA's cyber security personnel have spent a significant amount of time configuring MAA's security systems to prevent Philipson from harassing its employees. (Exhibit A at ¶¶ 7-8). Moreover, the emails Philipson sent to MAA's employees in violation of the Injunction have interfered with MAA's relationship with its

### Case 2:23-cv-02186-SHL-cgc Document 113 Filed 07/08/24 Page 10 of 12 PageID 2078

employees. The LinkedIn Profiles Philipson created in violation of the Injunction have also harmed MAA. For instance, the content Philipson included in the LinkedIn Profiles damages MAA's reputation by suggesting that MAA has an employee who is willing to help someone "grow their business illegally" or violate securities and exchange laws. (*See* Exhibit I). The voluminous entries Philipson has made to the MAA whistleblower platform to harass and intimidate MAA have caused MAA to expend substantial resources to review and investigate each frivolous claim. Further, this harassment has taken a toll on MAA Persons charged with monitoring the platform. If Philipson is not deterred from further violating the Injunction, his actions will continue to injure MAA's good will with its employees and customers. Therefore, sanctions are appropriate in this case both "to coerce [Philipson] into compliance with the [Injunction], and to compensate [MAA] for losses sustained" in trying to prevent him from continuously contacting its employees. *See Gary's Elec. Serv. Co.*, 340 F.3d at 379; *see also Gus's Franchisor, LLC*, 2021 WL 918075, at \*3.

#### **CONCLUSION**

For the reasons stated herein, MAA respectfully requests that this Court grant the Motion for Contempt, award MAA its attorney's fees and costs associated with bringing this Motion for Contempt, and award any other sanctions against Philipson that the Court deems appropriate under the circumstances for Philipson to purge his contempt.

Respectfully Submitted,

<u>/s/Paige Waldrop Mills</u> Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC 150 3<sup>rd</sup> Ave. South, Suite 2800 Nashville, Tennessee 37201

### Document 113 Filed 07/08/24 Page 11 of 12 PageID 2079

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John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com jordan.thomas@bassberry.com

Counsel for Mid-America Apartment Communities, LLC Case 2:23-cv-02186-SHL-cgc

#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2024 the forgoing was served on the individual below by the ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way PO Box 30142 Alexandria, Virginia 22310 Phillydee100@gmail.com Dphilipson1982@yahoo.com

> <u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

## EXHIBIT A

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

)

ntiff,
endant.

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

#### DECLARATION OF ALEX TARTERA IN SUPPORT OF MAA'S MOTION FOR CONTEMPT

I, Alex Tartera, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct:

1. I am the Vice President of Cyber Security for Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff"), and I submit this declaration in support of MAA's Motion for Contempt For Violating Permanent Injunction and Incorporated Memorandum of Law (the "Motion for Contempt") against Defendant Dennis Philipson ("Philipson").

2. Attached hereto as **Exhibit 1** is a true and correct copy of a report that I created that shows the metadata of Philipson's emails to MAA personnel from the time the Court entered its Order Granting Motion for Sanctions of Judgment and Granting in Part Motion for Permanent Injunction (the "Injunction") (Dkt. 97) to June 13, 2024 ( "Report No. 1").

3. As shown in Report No. 1, Philipson made fifty-four attempts to send emails directly to MAA personnel on May 21, May 31, and June 13, 2024. (*See* Exhibit 1). After I created Report No. 1, Philipson attempted to contact MAA employees again via email on June 21, 2024.

1

#### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 3 of 29 PageID 2083

4. Philipson copied at least sixteen different MAA email accounts on emails he sent on June 13, 2024, including group email addresses that include various individual MAA employees. (*See* Exhibit 1).

5. Subsequently, Philipson attempted to email MAA employees again on June 26, 2024. Attached hereto as **Exhibit 2** is a true and correct copy of a second report that I created that shows the metadata of the emails Philipson sent to MAA personnel on June 26, 2024 ("Report No. 2"). As shown in Report No. 2, Philipson made 559 attempts to send emails directly to MAA personnel on June 26, 2024. (*See* **Exhibit 2**).

6. On July 6, 2024, Philipson again attempted to email MAA employees from the alias Tim Grimes. Attached hereto as **Exhibit 3** is a true and correct copy of a third report that I created that shows the metadata of the emails Philipson sent to MAA personnel on July 6, 2024. As shown in Report No. 3, Philipson made 170 attempts to send emails directly to MAA personnel on July 6, 2024. (*See* **Exhibit 3**).

7. MAA has created a content filter designed to block emails from Philipson. While some of Philipson's emails to MAA personnel were blocked by this content filter, many MAA employees still received Philipson's emails. (*See* Exhibit 1).

8. MAA continues to update its content filter as it identifies unique aspects related to Philipson and blocks email addresses as Philipson changes them. Philipson continues to make nearly daily attempts to email MAA and its employees so this number is constantly increasing.

9. Further, this weekend, on July 6, 2024, I discovered that an individual we believe to be Mr. Philipson had purchased a new domain name containing MAA's trademarks: MyMAa.online. (See Exhibit 4).

2

Document 113-1 PageID 2084

Dated: July 8, 2024.

Alex Tartera Alex Tartera

Case 2:23-cv-02186-SHL-cgc

#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2024 the forgoing was served on the individual below by the ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 Phillydee100@gmail.com

> <u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

Document 113-1 PageID 2086

# EXHIBIT 1

## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 7 of 29 PageID 2087

Status	From (Envelope)	From (Header)	То	Subject	Sent Date/Time	IP Address Attachment	Route	Info	Snam Sco	or Spam Dete
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <jackie.melnick@maac.com>"</jackie.melnick@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:56 EDT 2024	Has Attachment		Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <rob.delpriore@maac.com>"</rob.delpriore@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:56 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <investorrelations@maac.com>"</investorrelations@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:56 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <accounting@postproperties.com>"</accounting@postproperties.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <eric.bolton@maac.com>"</eric.bolton@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <servicenow@maac.com>"</servicenow@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <leslie.wolfgang@maac.com>"</leslie.wolfgang@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <employee.relations@maac.com>"</employee.relations@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <it@maac.com>"</it@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <amber.fairbanks@maac.com>"</amber.fairbanks@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <legal@maac.com>"</legal@maac.com>	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 18:01:55 EDT 2024	Has Attachment	inbound	Hard Bounce	3	Aggressive
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Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>py "Wolfgang, Leslie"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	py "Wolfgang, Leslie"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>DelPriore, Rob"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	DelPriore, Rob"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>py "Investor Relations"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	py "Investor Relations"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>y "Fairbanks, Amber"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	y "Fairbanks, Amber"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
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Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>py "servicenow@maac.com"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	py "servicenow@maac.com"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td></td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>		RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>∮y "McGown, Gigi"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	∮y "McGown, Gigi"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	dphilipson1982@yahoo.com <dphilipson1982@< td=""><td>y "Melnick, Jackie"</td><td>RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson</td><td>Thu Jun 13 14:27:00 EDT 2024</td><td>74.6.131.1 Has Attachment</td><td>inbound</td><td>Indexed and archived</td><td>3</td><td>Aggressive</td></dphilipson1982@<>	y "Melnick, Jackie"	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:27:00 EDT 2024	74.6.131.1 Has Attachment	inbound	Indexed and archived	3	Aggressive
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Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	D Philipson <dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	"Accounting"	FW: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:24:00 EDT 2024	74.6.134.1	inbound	Indexed and archived	1	Aggressive
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Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	D Philipson <dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	"Investor Relations"	FW: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson	Thu Jun 13 14:24:00 EDT 2024	74.6.134.1	inbound	Indexed and archived	1	Aggressive
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Bounced	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	" <eugenia.mcgown@maac.com>"</eugenia.mcgown@maac.com>	[EXTERNAL] Re: 23-2186 Notice of Setting (Contempt Hearing)	Fri May 31 09:38:52 EDT 2024	52.101.9.1	inbound	Hard Bounce	1	Aggressive
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Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	D Philipson <dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	"Payroll <payroll@maac.com>"</payroll@maac.com>	Fw: 23-2186 Notice of Setting (Contempt Hearing)	Tue May 21 15:38:00 EDT 2024	74.6.131.1	inbound	Indexed and archived	0	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	D Philipson <dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>		Pn Fw: 23-2186 Notice of Setting (Contempt Hearing)	Tue May 21 15:38:00 EDT 2024	74.6.129.1	inbound	Indexed and archived	0	Aggressive
Archived	<dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	D Philipson <dphilipson1982@yahoo.com></dphilipson1982@yahoo.com>	"Brooks, Anwar"	[EXTERNAL] Fw: 23-2186 Notice of Setting (Contempt Hearing)	Tue May 21 15:36:00 EDT 2024	104.47.58.	internal	Indexed and archived		
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# EXHIBIT 2

## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 9 of 29 PageID 2089

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Aggressive Aggressive Aggressive

### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 13 of 29 PageID 2093

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Held	<pre>straincoant straincoant scale about the strain of the</pre>	Fw: Retalia Wed Jun 26 16:01:25 EDT 2024		Has Attach inbound	Message F2	Aggressive
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#### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 14 of 29 PageID 2094

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#### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 15 of 29 PageID 2095

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### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 16 of 29 PageID 2096

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Rejected						2:37 EDT 2024				nbound		nvalid Rec0	
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Held		" <utilities@maac.com>"</utilities@maac.com>				2:21 EDT 2024			Has Attach i	nbound		Message ⊦2	Aggressive
Held		" <investorrelations@maac.com>"</investorrelations@maac.com>				2:21 EDT 2024			Has Attach i	nbound		Message ⊦2	Aggressive
Held		" <tavia.williams@maac.com>"</tavia.williams@maac.com>				8:03 EDT 2024			Has Attach i			Message ⊦2	Aggressive
Held		" <marylou.scruggs@maac.com>"</marylou.scruggs@maac.com>				8:03 EDT 2024			Has Attach i			Nessage F2	Aggressive
Held		" <julie.noggle@maac.com>"</julie.noggle@maac.com>				8:03 EDT 2024			Has Attach i			Message ⊦2	Aggressive
Held		" <kory.lavelle@maac.com>"</kory.lavelle@maac.com>				8:03 EDT 2024			Has Attach i			Message F2	Aggressive
Held		" <thannie.locklear@maac.com>"</thannie.locklear@maac.com>				8:03 EDT 2024			Has Attach in			Message F2	Aggressive
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Held		" <jana.ellis@maac.com>"</jana.ellis@maac.com>				8:03 EDT 2024			Has Attach in			Message F2	Aggressive
Held		" <jay.blackman@maac.com>"</jay.blackman@maac.com>				8:03 EDT 2024			Has Attach i			Message F2	Aggressive
Held		" <jason.leiter@maac.com>"</jason.leiter@maac.com>				8:03 EDT 2024			Has Attach i			Nessage F2	Aggressive
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#### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 18 of 29 PageID 2098

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Held	<frankcant "<jackie.melnick@maac.com="" <frankcant="">"</frankcant>
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Held	<frankcant "<gayle.mackovic@maac.com="" <frankcant="">"</frankcant>
Held	<frankcant "<diane.gilmore@maac.com="" <frankcant="">"</frankcant>
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Held	<pre><frankcant "<employee.relations@maac.com="" <frankcant="">"</frankcant></pre>
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Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Re: Retalia Wed Jun 26 15:48:03 EDT 2024	40.92.43.32
Retaliation Wed Jun 26 15:45:14 EDT 2024	40.92.19.65
Retaliation Wed Jun 26 15:45:14 EDT 2024	40.92.19.65
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Retaliation Wed Jun 26 15:45:14 EDT 2024	40.92.19.65
Retaliation Wed Jun 26 15:45:14 EDT 2024	40.92.19.65
Retaliation Wed Jun 26 15:45:14 EDT 2024	40.92.19.65
Retaliation Wed Jun 26 15:44:47 EDT 2024	40.92.19.65
Retaliation Wed Jun 26 15:44:47 EDT 2024	40.92.19.65

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# EXHIBIT 3

## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 20 of 29 PageID 2100

					Sent		Attachmen				Spam
Status	From (Envelope)	From (Header)	То	Subject		IP Address t		Route	Info	Spam Score	
					Sat Jul 06					•	
						52.101.194.					
Bounced	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	" <christopher.roetker@maac.com>"</christopher.roetker@maac.com>	& Sims PLC Golwen and Kapellas Complaint		3		inbound	Hard Bounce	0	Aggressive
					Sat Jul 06 13:02:14	136.143.18					
Rejected	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>		" <christopher.lynn@maac.com>"</christopher.lynn@maac.com>			4.18		inbound	Invalid Recip	0	
nejecteu	ternigi inteste infinitationintes		territori in a de le company de la company		Sat Jul 06			moound	intend needs	•	
				[EXTERNAL] Re: MAA - Attornies - Bass, Berry	13:02:14						
Bounced	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	" <eugenia.mcgown@maac.com>"</eugenia.mcgown@maac.com>	& Sims PLC Golwen and Kapellas Complaint	EDT 2024	52.101.11.3		inbound	Hard Bounce	0	Aggressive
					Sat Jul 06						
					13:02:00	136.143.18					
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"eugeniamcgown <eugenia.mcgown@maac.com>"</eugenia.mcgown@maac.com>	Golwen and Kapellas Complaint	EDT 2024 Sat Jul 06	4.18		inbound	Indexed and	0	Aggressive
				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18					
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"gigimcgown <gigi.mcgown@maac.com>"</gigi.mcgown@maac.com>	Golwen and Kapellas Complaint		4.18		inbound	Indexed and	0	Aggressive
			8-8	· · · · · · · · · · · · · · · · · · ·	Sat Jul 06						
				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:02:00	136.143.18					
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"stephenwoo <stephen.woo@maac.com>"</stephen.woo@maac.com>	Golwen and Kapellas Complaint		4.18		inbound	Indexed and	0	Aggressive
					Sat Jul 06						
ام بنطوی ۵		Tim Crimes stime grimes @mumos enlines	"diannalatniak dianna alatniak@maaa aama"	Re: MAA - Attornies - Bass, Berry & Sims PLC Golwen and Kapellas Complaint		136.143.18 4.18		أسبعهما	المعاميتهما مسط	0	A
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"dianneslotnick <dianne.slotnick@maac.com>"</dianne.slotnick@maac.com>	Golwen and Kapenas complaint	Sat Jul 06	4.10		inbound	Indexed and	0	Aggressive
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					Sat Jul 06						
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					Sat Jul 06						
Archived	stim grimos@mumoo onlino>	Tim Grimosetim grimos@mumaa.onlino>	"alizabathlang.colizabath lang@maac.com>"			136.143.18 4.18		inbound	Indexed and	0	Aggrossivo
Archiveu	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"elizabethlong <elizabeth.long@maac.com>"</elizabeth.long@maac.com>	Golwen and Kapellas Complaint	Sat Jul 06	4.10		inbound	indexed and	0	Aggressive
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					Sat Jul 06						
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"tynikaduckett <tynika.duckett@maac.com>"</tynika.duckett@maac.com>	Golwen and Kapellas Complaint		4.18		inbound	Indexed and	0	Aggressive
				Por MAA Attornion Parc Parry & Sime DLC	Sat Jul 06 13:02:00	136.143.18					
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"nicolekline <nicole.kline@maac.com>"</nicole.kline@maac.com>	Re: MAA - Attornies - Bass, Berry & Sims PLC Golwen and Kapellas Complaint		4.18		inbound	Indexed and	0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:02:00	136.143.18					
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"glennrussell <glenn.russell@maac.com>"</glenn.russell@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18		inbound	Indexed and	0	Aggressive
					Sat Jul 06						
						136.143.18					
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				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18					
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						136.143.18					
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"jasonleiter <jason.leiter@maac.com>"</jason.leiter@maac.com>	Golwen and Kapellas Complaint		4.18		inbound	Indexed and	0	Aggressive
				Dec MAAA Attendies Deer Deere & Circo Di C	Sat Jul 06	426 4 42 40					
Archivod	stim grimos@mumoo onlino>	Tim Grimosetim grimos@mumaa.onlino>	"moliceacuronacmolicea curona@maac.com>"			136.143.18 4.18		inhound	Indexed and	0	Aggrossivo
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"melissaswope <melissa.swope@maac.com>"</melissa.swope@maac.com>	Golwen and Kapellas Complaint	Sat Jul 06	4.10		inbound	muexeu anu	0	Aggressive
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					13:01:00	136.143.18				_	
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	Sat Jul 06	136.143.18					
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## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 21 of 29 PageID 2101

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					Sat Jul 06				
				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"dianegilmore <diane.gilmore@maac.com>"</diane.gilmore@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"andreamack <andrea.mack@maac.com>"</andrea.mack@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
				Re: MAA - Attornies - Bass, Berry & Sims PLC	Sat Jul 06 13:01:00	136.143.18			
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Archiveu	<ul> <li>cum.grimes@mymaa.onime&gt;</li> </ul>	Tim Grines <tim.grines@mymaa.onime></tim.grines@mymaa.onime>	gaylemackovic <gayle.mackovic@maac.com></gayle.mackovic@maac.com>	Conventing Rapenas Complaint	Sat Jul 06	4.10	IIIboullu	indexed and 0	Aggressive
				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"cliffkoterwas <cliff.koterwas@maac.com>"</cliff.koterwas@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
	,	, ,	· ··· ··· ··· ··· ··· ··· ··· ··· ···		Sat Jul 06				00
				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"lucywiggins <lucy.wiggins@maac.com>"</lucy.wiggins@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
					Sat Jul 06				
				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:01:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"marylouscruggs <marylou.scruggs@maac.com>"</marylou.scruggs@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"rosiematzen <rosie.matzen@maac.com>"</rosie.matzen@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"jayblackman <jay.blackman@maac.com>"</jay.blackman@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"natashajohnson <natasha.johnson@maac.com>"</natasha.johnson@maac.com>	Re: MAA - Attornies - Bass, Berry & Sims PLC Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"ashleesanders <ashlee.sanders@maac.com>"</ashlee.sanders@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"shannoncarter <shannon.carter@maac.com>"</shannon.carter@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
					Sat Jul 06				
				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:01:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"reginajackson <regina.jackson@maac.com>"</regina.jackson@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC		136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"aaronjustin <aaron.justin@maac.com>"</aaron.justin@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:01:00	136.143.18			
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:01:00	136.143.18			
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"danavillain <dana.villain@maac.com>"</dana.villain@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 22 of 29 PageID 2102

					Sat Jul 06				
				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:01:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"kristinekee <kristine.kee@maac.com>"</kristine.kee@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"nicolebroussard <nicole.broussard@maac.com>"</nicole.broussard@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Rejected	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>		" <david.houtz@maac.com>"</david.houtz@maac.com>		EDT 2024	4.18	inbound	Invalid Recir 0	
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Rejected	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>		" <james.french@maac.com>"</james.french@maac.com>		EDT 2024	4.18	inbound	Invalid Recir 0	
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:00:00	136.143.18			
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"michaelhalbrook <michael.halbrook@maac.com>"</michael.halbrook@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"michellemurphy <michelle.murphy@maac.com>"</michelle.murphy@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:00:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"alexguyton <alex.guyton@maac.com>"</alex.guyton@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:00:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"kyleelambert <kylee.lambert@maac.com>"</kylee.lambert@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:00:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"lorialvarado <lori.alvarado@maac.com>"</lori.alvarado@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"denisedavenport <denise.davenport@maac.com>"</denise.davenport@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
				complaint	Sat Jul 06				
				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:00:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"laurenmillican <lauren.millican@maac.com>"</lauren.millican@maac.com>	Golwen and Kapellas Complaint	EDT 2024		inbound	Indexed and 0	Aggressive
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## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 23 of 29 PageID 2103

					Sat Jul 06				
				Re: MAA - Attornies - Bass, Berry & Sims PLC	13:00:00	136.143.18			
Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"marlastaton <marla.staton@maac.com>"</marla.staton@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"bryanellsberry <bryan.ellsberry@maac.com>"</bryan.ellsberry@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Archived	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	Tim Grimes <tim.grimes@mymaa.online></tim.grimes@mymaa.online>	"korylavelle <kory.lavelle@maac.com>"</kory.lavelle@maac.com>	Golwen and Kapellas Complaint	EDT 2024	4.18	inbound	Indexed and 0	Aggressive
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Bounced	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	<tim.grimes@mymaa.online></tim.grimes@mymaa.online>	" <timothy.argo@maac.com>"</timothy.argo@maac.com>		EDT 2024	19	inbound	Hard Bounce0	Aggressive
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## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 24 of 29 PageID 2104

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## Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 25 of 29 PageID 2105

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### Case 2:23-cv-02186-SHL-cgc Document 113-1 Filed 07/08/24 Page 26 of 29 PageID 2106

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# EXHIBIT 4

#### **Domain Whois record**

Queried whois.nic.online with "mymaa.online" ....

Domain Name: MYMAA.ONLINE Registry Domain ID: D469029546-CNIC Registrar WHOIS Server: whois.tucows.com Registrar URL: http://www.tucows.com/ Updated Date: 2024-07-06T16:42:26.0Z Creation Date: 2024-07-06T16:42:23.0Z Registry Expiry Date: 2025-07-06T23:59:59.02 Registrar: Tucows.com Co. Registrar IANA ID: 69 Domain Status: serverTransferProhibited https://icann.org/epp#serverTransferProhibited Domain Status: clientTransferProhibited https://icann.org/epp#clientTransferProhibited Domain Status: clientUpdateProhibited https://icann.org/epp#clientUpdateProhibited Domain Status: addPeriod https://icann.org/epp#addPeriod Registrant Organization: Data Protected Registrant State/Province: Tennessee Registrant Country: US Registrant Email: Please guery the RDDS service of the Registrar of Record identified in this output for information on how to contact the Registrant, Admin, or Tech contact of the gueried domain name. Admin Email: Please query the RDDS service of the Registrar of Record identified in this output for information on how to contact the Registrant, Admin, or Tech contact of the gueried domain name. Tech Email: Please guery the RDDS service of the Registrar of Record identified in this output for information on how to contact the Registrant, Admin, or Tech contact of the gueried domain name. Name Server: NS1.SYSTEMDNS.COM Name Server: NS2.SYSTEMDNS.COM Name Server: NS3.SYSTEMDNS.COM DNSSEC: unsigned Billing Email: Please query the RDDS service of the Registrar of Record identified in this output for information on how to contact the Registrant, Admin, or Tech contact of the gueried domain name. Registrar Abuse Contact Email: domainabuse@tucows.com Registrar Abuse Contact Phone: +1.4165350123 URL of the ICANN Whois Inaccuracy Complaint Form: https://www.icann.org/wicf/ >>> Last update of WHOIS database: 2024-07-08T13:39:57.0Z <<<

Queried whois.tucows.com with "mymaa.online" ...

Document 113-2 Filed 07/08/24 Page 1 of 4 PageID 2110

## EXHIBIT B

From:	dphilipson1982@yahoo.com
Sent:	Thursday, June 13, 2024 1:23 PM
То:	sheryl_lipman@tnwd.uscourts.gov; candace_covey@tnwd.uscourts.gov; Golwen, John S.;
	Thomas, Jordan; Mills, Paige; phillydee100@gmail.com; mphilly@gmail.com;
	mphillyd@gmail.com;
	morgan_gloss@tnwd.uscourts.gov;
	cherylann_pasha@tnwd.uscourts.gov;
	michael_kapellas@tnwd.uscourts.gov; dphilipson1982@yahoo.com; 'Melanie Mullen';
	Golwen, John S.; 'Joe Warren'; Thomas, Jordan; marc_theriault@ao.uscourts.gov
Cc:	ecf_judge_claxton@tnwd.uscourts.gov;        ecf_judge_lipman@tnwd.uscourts.gov;
	ECF_Judge_McCalla@tnwd.uscourts.gov;        ecf_judge_york@tnwd.uscourts.gov;
	ECF_Judge_Mays@tnwd.uscourts.gov; ECF_Judge_Christoff@tnwd.uscourts.gov;
	ECF_Judge_Claxton@tnwd.uscourts.gov; Blanchard, Nicole; Williams, Kris R.;
	McClanahan, Teresa; Thomas, Jordan
Subject:	Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson

Hello,

I hope this message finds you well. I am writing to inquire about the progress of the current proceedings, as referenced in the attached order. I would like to get this over with, pay the bill, and move on. I am tired of the intimidation and harassment brought on persistently by MAA since 2021, their counsel, employees, and contractors. I have had to change my email address and phone number various times due to the constant harassment as well as unjust subpoenas brought on by MAA's counsel. I have reported these actions to the Ethics Board, the Judicial Board, the Sixth Circuit, the Circuit Executive, and the FBI. In April 2021, I provided significant documentation to MAA's whistleblower hotline and various regulatory agencies concerning potential antitrust violations, accounting irregularities, securities compliance issues, and many other legal issues associated with MAA. The gravity of these submissions reflects severe legal concerns that warrant prompt and thorough judicial consideration.

Given the complexities involved, including the recent FBI raid on antitrust issues with RealPage and Cortland Property Management in Atlanta, the urgency for a transparent resolution is heightened. These matters affect the parties directly involved and hold broader implications for regulatory and compliance standards within the industry.

Furthermore, I wish to bring to your attention a potential conflict of interest concerning Mr. Michael Kapellas, who has previously been employed by Bass, Berry & Sims PLC—the counsel representing the opposing side. Under the American Bar Association Model Rules of Professional Conduct, specifically Rule 1.12, former judges, arbitrators, mediators, or other adjudicative officers are required to avoid participation in matters where they had a prior involvement unless all parties give informed consent. Given Mr. Kapellas' association with a party's legal team, an assessment for potential recusal seems prudent to uphold the integrity of the proceedings. I trust you will consider this matter with the utmost seriousness.

Could you please provide clarity on whether Tennessee law supports a similar stance on such conflicts of interest, or if a recusal is deemed necessary in this context? Your prompt guidance on this matter is of utmost importance. I look forward to your response.

Mr. Kapellas authored various orders against me:

Case 2:23-cv-02186-SHL-cgc

# Document 113-2 Filed 07/08/24 Page 3 of 4 PageID 2112

BASE DERRY-BINS

Michael Kapellas

Part 2. 2020

### BASS BERRY+SINS

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Thank you for your assistance and for facilitating a fair and expeditious review of these pressing issues. Best regards, Dennis Philipson

# 3

Document 113-3 Filed 07/08/24 Page 1 of 4 PageID 2114

# EXHIBIT C

From:	dphilipson1982@yahoo.com
Sent:	Thursday, June 13, 2024 1:27 PM
То:	sheryl_lipman@tnwd.uscourts.gov; candace_covey@tnwd.uscourts.gov; Golwen, John S.; Thomas, Jordan; Mills, Paige; phillydee100@gmail.com; mphilly@gmail.com; mphillyd@gmail.com; melanie_mullen@tnwd.uscourts.gov;
	morgan_gloss@tnwd.uscourts.gov;
	cherylann_pasha@tnwd.uscourts.gov; kyle_brantley@tnwd.uscourts.gov;
	michael_kapellas@tnwd.uscourts.gov; 'Melanie Mullen'; Golwen, John S.; 'Joe Warren';
	Thomas, Jordan; marc_theriault@ao.uscourts.gov
Cc:	ecf_judge_claxton@tnwd.uscourts.gov; ecf_judge_lipman@tnwd.uscourts.gov;
	ECF_Judge_McCalla@tnwd.uscourts.gov; ecf_judge_york@tnwd.uscourts.gov;
	ECF_Judge_Mays@tnwd.uscourts.gov; ECF_Judge_Christoff@tnwd.uscourts.gov;
	ECF_Judge_Claxton@tnwd.uscourts.gov; Blanchard, Nicole; Williams, Kris R.;
	McClanahan, Teresa; Thomas, Jordan
Subject:	RE: Order and Judgment 2:23-cv-02186-SHL-cgc - Philipson
Attachments:	show_temp (1).pdf; 5-22-24 - Circuiit Executive - Citizens for Ethics.pdf

Apologies, I forgot the attachments.

Hello,

I hope this message finds you well. I am writing to inquire about the progress of the current proceedings, as referenced in the attached order. I would like to get this over with, pay the bill, and move on. I am tired of the intimidation and harassment brought on persistently by MAA since 2021, their counsel, employees, and contractors. I have had to change my email address and phone number various times due to the constant harassment as well as unjust subpoenas brought on by MAA's counsel. I have reported these actions to the Ethics Board, the Judicial Board, the Sixth Circuit, the Circuit Executive, and the FBI. In April 2021, I provided significant documentation to MAA's whistleblower hotline and various regulatory agencies concerning potential antitrust violations, accounting irregularities, securities compliance issues, and many other legal issues associated with MAA. The gravity of these submissions reflects severe legal concerns that warrant prompt and thorough judicial consideration.

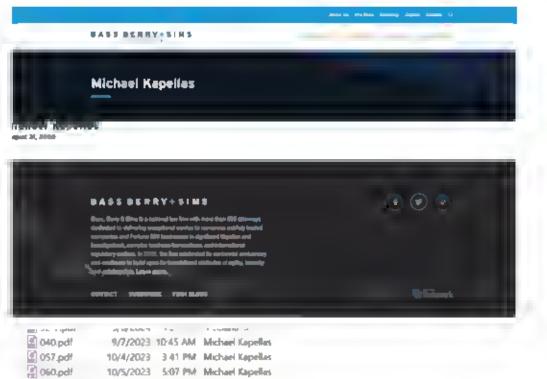
Given the complexities involved, including the recent FBI raid on antitrust issues with RealPage and Cortland Property Management in Atlanta, the urgency for a transparent resolution is heightened. These matters affect the parties directly involved and hold broader implications for regulatory and compliance standards within the industry.

Furthermore, I wish to bring to your attention a potential conflict of interest concerning Mr. Michael Kapellas, who has previously been employed by Bass, Berry & Sims PLC—the counsel representing the opposing side. Under the American Bar Association Model Rules of Professional Conduct, specifically Rule 1.12, former judges, arbitrators, mediators, or other adjudicative officers are required to avoid participation in matters where they had a prior involvement unless all parties give informed consent. Given Mr. Kapellas' association with a party's legal team, an assessment for potential recusal seems prudent to uphold the integrity of the proceedings. I trust you will consider this matter with the utmost seriousness.

Could you please provide clarity on whether Tennessee law supports a similar stance on such conflicts of interest, or if a recusal is deemed necessary in this context? Your prompt guidance on this matter is of utmost importance. I look forward to your response.

Filed 07/08/24 Document 113-3 PageID 2116

Mr. Kapellas authored various orders against me:



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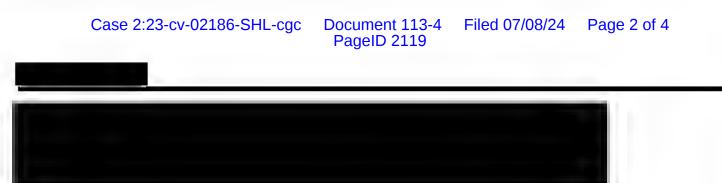
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Thank you for your assistance and for facilitating a fair and expeditious review of these pressing issues. Best regards, Dennis Philipson

## 3

Document 113-4 PageID 2118

# EXHIBIT D



From: Mason Behr <<u>maybear1420@gmail.com</u>>
Sent: Wednesday, July 3, 2024 7:03 PM
To: DelPriore, Rob <<u>rob.delpriore@maac.com</u>>; Bolton, Eric <<u>Eric.Bolton@maac.com</u>>;
Deborah.Caplan@nexteraenergy.com <<u>Deborah.Caplan@nexteraenergy.com</u>>; <u>ethics@maac.com</u>>;
Employee Relations <<u>Employee.Relations@maac.com</u>>
Cc: <u>maybear1420@gmail.com</u> <<u>maybear1420@gmail.com</u>>
Subject: [EXTERNAL] Notice of Intent to File a Lawsuit for Retaliation

Dear Ms. Caplan, Mr. Bolton, Mr. Delpriore, MAA Ethics Department, Employee Relations and Board of Directors,

Ms. Caplan, My apologies for contacting you directly, but the ethics team refused to provide me with a contact for the Board of Directors regarding my recent whistleblower complaints. Additionally, your name was mentioned during the deposition against me. Any letters mailed to the board are directed to Ms. Wolfgang, who also manages the whistleblower hotline. Additionally, she has made numerous false and speculative accusations against me in this absurd trial involving extreme bias and abuse of power. Consequently, I am uncertain if any of my previous correspondence has actually reached the board

I am unsure if the board has reviewed my initial whistleblower submission from 2021, as well as the numerous submissions I began making in June of 2024, including a detailed 100-page document that outlines my experiences over the last four years with MAA, its executives as well as the Western Tennessee federal court system. I believe these experiences reveal severe unethical practices. It has come to my attention that the audit committee does not review certain internal controls, which are only examined by management, a practice that seems questionable at best. I am prepared to address these issues directly to their faces, without the need to hide behind a lawyer or anonymous email accounts.

First and foremost, please be advised that I will be appealing any final judgment and all interlocutory judgments against me in the "trademark infringement" case in the Western District of Tennessee.

Secondly,I am writing to formally notify Mid-America Apartment Communities, Inc. (MAA) and its subsidiaries of my intent to file a lawsuit for retaliation. This lawsuit will be filed in the United States District Court for the Northern District of Georgia where the majority of their subsidiaries are located.

I engaged in protected whistleblowing by reporting suspected illegal and unethical conduct by MAA to the SEC and other authorities. In response, MAA and its subsidiaries have retaliated against me through:

- Unlawful surveillance and monitoring
- Tampering with my personal and electronic mail
- Filing baseless legal claims and motions

Document 113-4 Filed C PageID 2120

- Making defamatory statements

These actions have caused significant harm, including emotional distress, reputational damage, and financial losses.

Legal Basis for the Lawsuit:

- 1. Violation of the Sarbanes-Oxley Act (SOX)
- 2. Violation of the Dodd-Frank Act
- 3. Violation of State Whistleblower Protection Laws
- 4. Defamation
- 5. Intentional Infliction of Emotional Distress

Subsidiaries Involved:

The lawsuit will include the following Atlanta-based subsidiaries:

- 3630 South Tower Residential, LLC
- 98 San Jac Holdings, LLC
- PAH Lender, LLC
- Park Land Development, LLC
- PBP Apartments, LLC
- PF Apartments, LLC
- PL Conservation, LLC
- Post 1499 Massachusetts, LLC
- Post Alexander II, LLC
- Post Asset Management, Inc.
- Post Carlyle I, LLC
- Post Centennial Park, LLC
- Post Corners, LLC
- Post Galleria, LLC
- Post Hyde Park, LLC
- Post Midtown Atlanta, LLC
- Post Midtown Square GP, LLC
- Post Midtown Square, L.P.
- Post Park, LLC
- Post Park Development, LLC
- Post Parkside at Wade II GP, LLC
- Post Parkside at Wade II, L.P.
- Post Services, LLC
- Post South End GP, LLC
- Post South End, L.P.
- Post Wade Tract M-2, L.P.
- Rise Condominium Development, LLC

Abuse of Power and Misconduct in Tennessee Court:

- Conflict of Interest: The involvement of the judicial law clerk, Michael Kapellas, who previously worked with Plaintiff's law firm, raises serious conflicts of interest and violates the principles of judicial impartiality as outlined in 28 U.S.C. § 455

- Unlawful Subpoenas: The court has improperly issued subpoenas to obtain my personal and electronic records without proper justification, violating my privacy rights and legal protections.

- Intimidation Tactics: I have been subjected to various forms of intimidation designed to harass and dissuade me from pursuing my whistleblower claims. These tactics include unwarranted legal actions, defamatory statements, and invasive surveillance practices.

- Procedural Irregularities: The court's handling of evidence and misuse of subpoenas have severely compromised the integrity of the judicial process. Key decisions were made without sufficient evidence, and the sanctions imposed were disproportionately severe and unsupported by the facts of the case.

These actions have collectively violated my right to a fair trial and due process.

Thank you, Dennis Philipson PO Box 30142 Alexandria, VA 22310

# EXHIBIT E

Case 2:23-cv-02186-SHL-cgc

# Document 113-5 Filed 07/08/24 Page 2 of 3 PageID 2123

From: Mason Behr <<u>maybear1420@gmail.com</u>>
Sent: Thursday, July 4, 2024 11:03 AM
To: Tamara Fischer <<u>tfischer@nsastorage.com</u>>; Deborah.Caplan@nexteraenergy.com; Tamara Fischer
<<u>tfischer@nsareit.net</u>>
Subject: Re: Complaint - Documents 8 of 18

You don't often get email from maybear1420@gmail.com. Learn why this is important

On Thu, Jul 4, 2024 at 1:02 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

On Thu, Jul 4, 2024 at 1:02 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

On Thu, Jul 4, 2024 at 1:01 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

On Thu, Jul 4, 2024 at 1:01 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

On Thu, Jul 4, 2024 at 12:59 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

On Thu, Jul 4, 2024 at 12:59 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

On Thu, Jul 4, 2024 at 12:58 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

Hello,

If you would prefer that I cease emailing you, please inform me.

I must express my ongoing concerns regarding MAA's ethical practices. Despite the CONTINUED use of deceptive leasing specials on their website, writing fake reviews, violations in their lease agreements, data breaches, discrimination against individuals' civil rights, and hundreds of open cases in Atlanta alone from HUD, I am compelled to continue voicing these issues. I am reaching out in hopes of

# Case 2:23-cv-02186-SHL-cgc Document 113-5 Filed 07/08/24 Page 3 of 3 PageID 2124

connecting with someone on the board who shares these concerns, as I believe some long-standing members may not. I can also assure you that other government agencies will become involved, and the use of MAA's fraudulent order against me will be appealed.

Attached are various documents, recordings, incident reports, and more that I have also provided to other agencies. Additionally, I have included comprehensive metadata from the court that illustrates both bias and judicial misconduct.

Thank you,

Dennis Philipson

# EXHIBIT F



TimePhoto\_20240705\_114609.jpg; TimePhoto\_20240705\_114425.jpg; TimePhoto\_ 20240705\_114638.jpg; TimePhoto\_20240705\_114634.jpg; TimePhoto\_20240705\_ 114421.jpg; TimePhoto\_20240705\_114434.jpg

From: Mason Behr <<u>maybear1420@gmail.com</u>>
Sent: Friday, July 5, 2024 10:48 AM
To: DelPriore, Rob <<u>rob.delpriore@maac.com</u>>; Bolton, Eric <<u>Eric.Bolton@maac.com</u>>
Subject: [EXTERNAL] Re: Notice of Intent to File a Lawsuit for Retaliation

Looks good still!

On Wed, Jul 3, 2024, 8:03 PM Mason Behr <<u>maybear1420@gmail.com</u>> wrote:

Dear Ms. Caplan, Mr. Bolton, Mr. Delpriore, MAA Ethics Department, Employee Relations and Board of Directors,

Ms. Caplan, My apologies for contacting you directly, but the ethics team refused to provide me with a contact for the Board of Directors regarding my recent whistleblower complaints. Additionally, your name was mentioned during the deposition against me. Any letters mailed to the board are directed to Ms. Wolfgang, who also manages the whistleblower hotline. Additionally, she has made numerous false and speculative accusations against me in this absurd trial involving extreme bias and abuse of power. Consequently, I am uncertain if any of my previous correspondence has actually reached the board

I am unsure if the board has reviewed my initial whistleblower submission from 2021, as well as the numerous submissions I began making in June of 2024, including a detailed 100-page document that outlines my experiences over the last four years with MAA, its executives as well as the Western Tennessee federal court system. I believe these experiences reveal severe unethical practices. It has come to my attention that the audit committee does not review certain internal controls, which are only examined by management, a practice that seems questionable at best. I am prepared to address these issues directly to their faces, without the need to hide behind a lawyer or anonymous email accounts.

First and foremost, please be advised that I will be appealing any final judgment and all interlocutory judgments against me in the "trademark infringement" case in the Western District of Tennessee.

Secondly,I am writing to formally notify Mid-America Apartment Communities, Inc. (MAA) and its subsidiaries of my intent to file a lawsuit for retaliation. This lawsuit will be filed in the United States District Court for the Northern District of Georgia where the majority of their subsidiaries are located.

I engaged in protected whistleblowing by reporting suspected illegal and unethical conduct by MAA to the SEC and other authorities. In response, MAA and its subsidiaries have retaliated against me through:

- Unlawful surveillance and monitoring

Document 113-6 PageID 2127

PageID 2

- Tampering with my personal and electronic mail
- Filing baseless legal claims and motions
- Making defamatory statements

These actions have caused significant harm, including emotional distress, reputational damage, and financial losses.

Legal Basis for the Lawsuit:

- 1. Violation of the Sarbanes-Oxley Act (SOX)
- 2. Violation of the Dodd-Frank Act
- 3. Violation of State Whistleblower Protection Laws
- 4. Defamation
- 5. Intentional Infliction of Emotional Distress

Subsidiaries Involved:

The lawsuit will include the following Atlanta-based subsidiaries:

- 3630 South Tower Residential, LLC
- 98 San Jac Holdings, LLC
- PAH Lender, LLC
- Park Land Development, LLC
- PBP Apartments, LLC
- PF Apartments, LLC
- PL Conservation, LLC
- Post 1499 Massachusetts, LLC
- Post Alexander II, LLC
- Post Asset Management, Inc.
- Post Carlyle I, LLC
- Post Centennial Park, LLC
- Post Corners, LLC
- Post Galleria, LLC
- Post Hyde Park, LLC
- Post Midtown Atlanta, LLC
- Post Midtown Square GP, LLC
- Post Midtown Square, L.P.
- Post Park, LLC
- Post Park Development, LLC
- Post Parkside at Wade II GP, LLC
- Post Parkside at Wade II, L.P.
- Post Services, LLC
- Post South End GP, LLC
- Post South End, L.P.
- Post Wade Tract M-2, L.P.
- Rise Condominium Development, LLC

Abuse of Power and Misconduct in Tennessee Court:

# Case 2:23-cv-02186-SHL-cgc Document 113-6 Filed 07/08/24 Page 4 of 10 PageID 2128

- Conflict of Interest: The involvement of the judicial law clerk, Michael Kapellas, who previously worked with Plaintiff's law firm, raises serious conflicts of interest and violates the principles of judicial impartiality as outlined in 28 U.S.C. § 455

- Unlawful Subpoenas: The court has improperly issued subpoenas to obtain my personal and electronic records without proper justification, violating my privacy rights and legal protections.

- Intimidation Tactics: I have been subjected to various forms of intimidation designed to harass and dissuade me from pursuing my whistleblower claims. These tactics include unwarranted legal actions, defamatory statements, and invasive surveillance practices.

- Procedural Irregularities: The court's handling of evidence and misuse of subpoenas have severely compromised the integrity of the judicial process. Key decisions were made without sufficient evidence, and the sanctions imposed were disproportionately severe and unsupported by the facts of the case.

These actions have collectively violated my right to a fair trial and due process.

Thank you, Dennis Philipson PO Box 30142 Alexandria, VA 22310









# CARLYLE SQUARE

# TELE-ENTRY

LEASING DIAL 0001

601 HOLLAND LANE 703-519-7678



Jul 5, 2024 11:46:09 AM 640 Emerson Avenue

Alexandria

Virginia

0





Jul 5, 2024 11:46:38 AM 601 Holland Lane Alexandria

Virginia

# EXHIBIT G

From: Tim Grimes <<u>tim.grimes@mymaa.online</u>>

Sent: Saturday, July 6, 2024 11:58 AM To: Bolton, Eric < Eric.Bolton@maac.com>; bradley.hill < bradley.hill@maac.com>; timothyargo <timothy.argo@maac.com>; Carpenter, Melanie <Melanie.Carpenter@maac.com>; DelPriore, Rob <rob.delpriore@maac.com>; Fairbanks, Amber <Amber.Fairbanks@maac.com>; Fracchia, Joe <a>Joe.Fracchia@maac.com</a>; Holder, Clay <<u>Clay.Holder@maac.com</u></a>; Ward, David <<u>David.Ward@maac.com</u></a>; Wolfgang, Leslie <Leslie.Wolfgang@maac.com>; Agaj, Indrid <Indrid.Agaj@maac.com>; Andress, Scott <Scott.Andress@maac.com>; kimberlybanks <kimberly.banks@maac.com>; josephbartlett <joseph.bartlett@maac.com>; Buckner, Sam <Sam.Buckner@maac.com>; Davis, Warren <Warren.Davis@maac.com>; robertdonnelly < robert.donnelly@maac.com>; Ellis, Jana < Jana.Ellis@maac.com>; Ellsberry, Bryan <Bryan.Ellsberry@maac.com>; jamesfrench < james.french@maac.com>; Guyton, Alex < Alex.Guyton@maac.com>; Halbrook, Michael <<u>Michael.Halbrook@maac.com</u>>; Harris, Anna <<u>Anna.Harris@maac.com</u>>; davidhoutz <david.houtz@maac.com>; Keough, Liz <Liz.Keough@maac.com>; Lambert, Kylee <Kylee.Lambert@maac.com>; LaVelle, Kory <<u>Kory.LaVelle@maac.com</u>>; Banks, Kim <<u>Kim.Banks@maac.com</u>>; Staton, Marla <<u>Marla.Staton@maac.com</u>>; Millican, Lauren <Lauren.Millican@maac.com>; Alvarado, Lori <Lori.Alvarado@maac.com>; Mober, Cara <Cara.Mober@maac.com>; Phillips, Elizabeth <Elizabeth.Phillips@maac.com>; Lister, Anna <Anna.Lister@maac.com>; Donnelly, Bob <<u>Bob.Donnelly@maac.com</u>>; Pittman, Stephanie <<u>Stephanie.Pittman@maac.com</u>>; Davenport, Denise <Denise.Davenport@maac.com>; Murphy, Michelle <<u>Michelle.Murphy@maac.com>;</u> Knipmeyer, Randall <Randall.Knipmeyer@maac.com>; Mackovic, Gayle <Gayle.Mackovic@maac.com>; McDaniel, Lynn <Lynn.McDaniel@maac.com>; Gilmore, Diane <Diane.Gilmore@maac.com>; Wilson, Stephanie <<u>Stephanie.Wilson@maac.com</u>>; Mack, Andrea <<u>Andrea.Mack@maac.com</u>>; Noggle, Julie <<u>Julie.Noggle@maac.com</u>>; Carter, Shannon <Shannon.Carter@maac.com>; Leiter, Jason <Jason.Leiter@maac.com>; Wiggins, Lucy <Lucy.Wiggins@maac.com>; Koterwas, Cliff <Cliff.Koterwas@maac.com>; Villain, Dana <Dana.Villain@maac.com>; Scruggs, Marylou <<u>Marylou.Scruggs@maac.com</u>>; Melnick, Jackie <<u>Jackie.Melnick@maac.com</u>>; Johnson, Natasha <Natasha.Johnson@maac.com>; Williams, Tavia <Tavia.Williams@maac.com>; Bowers, Denise <Denise.Bowers@maac.com>; Kee, Kristine <Kristine.Kee@maac.com>; Locklear, Thannie <Thannie.Locklear@maac.com>; Blackman, Jay <Jay.Blackman@maac.com>; Pitsenbarger, Jenna <Jenna.Pitsenbarger@maac.com>; Marcus, Adam <Adam.Marcus@maac.com>; Sanders, Ashlee <<u>Ashlee.Sanders@maac.com</u>>; Matzen, Rosie <<u>Rosie.Matzen@maac.com</u>>; Uribe, Uriel <<u>Uriel.Uribe@maac.com</u>>; Wise, Jessica <Jessica.Wise@maac.com>; Justin, Aaron <Aaron.Justin@maac.com>; Jackson, Regina <Regina.Jackson@maac.com>; Swope, Melissa <Melissa.Swope@maac.com>; Broussard, Nicole <<u>Nicole.Broussard@maac.com</u>>; Kline, Nicole <<u>Nicole.Kline@maac.com</u>>; Duckett, Tynika <<u>Tynika.Duckett@maac.com</u>>; Freeman, Sam <<u>Sam.Freeman@maac.com</u>>; Long, Elizabeth <<u>Elizabeth.Long@maac.com</u>>; christopherlynn <<u>christopher.lynn@maac.com</u>>; eugeniamcgown <<u>eugenia.mcgown@maac.com</u>>; Perkins, Kevin <Kevin.Perkins@maac.com>; christopherroetker <christopher.roetker@maac.com>; Russell, Glenn <Glenn.Russell@maac.com>; Schaeffer, Andrew <Andrew.Schaeffer@maac.com>; Sill, Brad <Brad.Sill@maac.com>; Slotnick, Dianne <<u>Dianne.Slotnick@maac.com</u>>; Woo, Stephen <<u>Stephen.Woo@maac.com</u>>; McGown, Gigi <Gigi.McGown@maac.com> Subject: [EXTERNAL] Re: MAA - Attornies - Bass, Berry & Sims PLC Golwen and Kapellas Complaint

# Case 2:23-cv-02186-SHL-cgc

## Document 113-7 PageID 2137

Filed 07/08/24

Page 3 of 11

Persistent reports have been made concerning violations to the EEOC, incidents of data breaches, deceptive sales practices, harassment, intimidation, SEC violations, accounting discrepancies, safety concerns, HUD infractions, and more. Despite these reports, MAA has continuously retaliated since 2021 using harassment and intimidation tactics, lying through their whistleblower hotline, failing to provide independent assessments of their internal controls, withholding accurate records from the board and the public, and issuing misleading public statements.

It appears that MAA's endorsement of creating fraudulent orders, actions steeped in conflicts of interest and abuses of power, violates several established legal standards. This behavior not only raises ethical concerns under civil trial law but also contradicts the Tennessee Rules of Professional Conduct, specifically Rule 8.4 concerning misconduct which prohibits actions that are prejudicial to the administration of justice.

Moreover, these actions may breach the duty of candor towards the tribunal as stipulated in Rule 3.3 of the Tennessee Rules of Professional Conduct, by knowingly using false evidence or perpetuating a fraud in legal proceedings. The potential abuse of judicial resources for retaliatory litigation also touches on violations of Rule 1.3, which mandates diligence and prohibits actions that abuse legal procedures.

These issues are compounded by constitutional concerns under the Due Process Clause. The U.S. Supreme Court in *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), clearly established the necessity of judicial impartiality and addressed the risks of actual bias when parties with significant influence are involved in litigation, suggesting a critical review of such judicial relationships is necessary to uphold the integrity of the courts.

Furthermore, the involvement of MAA's senior team and executives in overlooking these serious ethical breaches aligns with an abuse of corporate power, potentially actionable under Section 1983 for violations of civil rights, which provides a remedy for misconduct involving any actor who causes the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.

The matter will be pursued vigorously until there is a comprehensive examination by regulatory bodies such as HUD, FTC, EEOC, SEC, IRS, and DOJ, ensuring MAA is held accountable for these alleged violations. This adherence to legal standards is not only a matter of regulatory compliance but also a fundamental aspect of justice.

Statements have been made alleging defamation by individuals, when, in fact, the issues and concerns raised are documented and verifiable through public sources. Simply conducting a search of the individuals involved reveals extensive information that challenges the claims made by MAA.

Under the laws governing defamation, specifically under U.S. common law, a claim must prove that the information was made with knowledge of its falsity or with reckless disregard for the truth. Public figures, such as company executives in a corporate context, also bear the burden of demonstrating actual malice, as established in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Additionally, making false statements in legal proceedings is addressed under various statutes including perjury under 18 U.S.C. § 1621, which criminalizes knowingly making false material statements under oath in federal proceedings. Similarly, under Rule 11 of the Federal Rules of Civil Procedure, legal filings must be well-grounded in fact and warranted by existing law, thereby discouraging false statements in court documents.

Wishing everyone a reflective and safe 4th of July weekend.

Document 113-7 PageID 2138

To: swright@tnbar.org <swright@tnbar.org>; lbrown@tnbar.org <lbrown@tnbar.org>; kbelcher@tnbar.org
<kbelcher@tnbar.org>; cbennett@tnbar.org<sbelcher@tnbar.org>
Subject: Re: Golwen and Kapellas Complaint

I apologize for the oversight; I forgot to include the attachment. I have the meta-data for the orders, which I have already presented to the court. However, it appears that the Western Tennessee Court does not see any issues with this situation.

Thank you for your understanding.

To: <a href="mailto:swright@tnbar.org">swright@tnbar.org</a>; <a href="mailto:brown@tnbar.org">brown@tnbar.org</a>; <a href="mailto:kbelcher@tnbar.org">kbelcher@tnbar.org</a>; <a href="mailto:sbelcher@tnbar.org">sbelcher@tnbar.org</a>; <a href="m

Good afternoon,

I hope this message finds you well. I have a concern regarding a potential conflict of interest and ethical violation involving attorney John Golwen of Bass, Berry & Sims PLC and judicial law clerk Michael Kapellas, a former attorney with the same firm until 2020.

Both individuals have worked on numerous cases against me and are now involved in a retaliation case against me with MAA Mid-America Apartment Communities. Given their prior professional relationship and involvement in my cases, I believe this situation raises significant ethical questions.

I have provided meta-data to the Board of Professional Responsibility, Judicial Board, Circuit Executive, and DOJ, demonstrating that Mr. Kapellas authored at least seven biased orders against me. Despite this, I noticed that he was recently honored with an award. Instead of recognition, I feel his conduct should be scrutinized.

Please review the attached and the active case 2:23-cv-02186 for further details.

Thank you for your attention to this matter.

----- Forwarded message ------

From: **Board of Professional Responsibility : Complaints, .** <<u>complaints@tbpr.org</u>> Date: Sat, Jul 6, 2024 at 9:32 AM Subject: New Complaint: 2024-11329-COMP

Dear Mr.

The Board of Professional Responsibility received your complaint against John Stone Golwen, and it has been assigned a complaint number of 2024-11329-COMP.

If you have not already submitted documentation supporting your complaint, please do so as soon as possible and include the provided complaint number. If the Board of Professional Responsibility does not receive supporting documentation within 30 days of filing the complaint, the complaint will be dismissed.

After receipt of your complaint and supporting documentation, the Board of Professional Responsibility will review your complaint for possible ethics violations. If the Board of Professional Responsibility opens an investigation, you will be provided with a new Investigation File Number.

Send supporting documentation by the following means (being certain to include the Complaint Number):

Email: complaints@tbpr.org

Traditional Mail: 10 Cadillac Dr Ste 220 Brentwood, TN 37027

I am compelled to express my increasing frustration and grave concern regarding the persistent harassment and unfounded legal proceedings that have been directed against me since April 2023. These actions appear to be a clear attempt to retaliate against me for my role as a whistleblower, extracting the evidence I provided to federal authorities, and subjecting me to ongoing intimidation and harassment. Despite my previous formal complaints against Ms. Mills and Mr. Kapellas, there has been a conspicuous lack of response or remedial action from your board.

The potential collusion between your board and Mr. Golwen, a prominent attorney, raises significant ethical concerns. The apparent abuse of judicial power within this court, particularly involving its judicial law clerk and the law firm Bass, Berry & Sims PLC, further

exacerbates these issues. My extensive research through the PACER system reveals substantial conflicts of interest permeating this case and others, warranting urgent and thorough investigation.

Under 28 U.S.C. § 455, judges and judicial officers are required to disqualify themselves in any proceeding where their impartiality might reasonably be questioned. This standard extends to situations involving prior relationships and potential conflicts of interest, which are evidently present in this case. The Code of Conduct for United States Judges mandates that judges must uphold and promote the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety in all activities. Canon 3 of this Code specifies that judges should perform the duties of the office fairly, impartially, and diligently, and should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.

The Western District of Tennessee Local Rules, particularly Rule 83.5, emphasize the necessity of maintaining high standards of professional conduct. The rule clearly stipulates that any conduct that compromises the integrity of the court must be addressed promptly and decisively. Despite these clear legal mandates, there has been a persistent failure to address the conflicts of interest and unethical behavior that I have reported. The professional relationship between the attorney in my case and the judicial law clerk should have been disclosed from the outset to avoid any appearance of bias. This non-disclosure is a serious breach of ethical conduct and undermines the fairness of the judicial process.

Moreover, the continued harassment and issuance of unfounded orders against me constitute an abuse of the judicial process. Such actions are not only unjust but also violate my rights under the Due Process Clause of the Fifth Amendment, which guarantees fair legal proceedings.

I have dutifully fulfilled my responsibility by reporting these serious issues to you, extending my concerns to both criminal and civil trial contexts. Additionally, I have communicated these matters to the Judicial Board, the Sixth Circuit Executive, and the Department of Justice. However, the lack of action and continued harassment I am experiencing suggests that these proceedings have become a spectacle for your amusement rather than a pursuit of justice.

I urge you to take immediate and effective action to rectify these violations. I formally request an immediate judgment and the termination of the proceedings against me. The ongoing harassment and retaliatory actions are unacceptable and must be stopped to uphold the principles of justice and fairness. Your prompt and decisive response is crucial

### Document 113-7 Filed 07/08/24 Page 7 of 11 PageID 2141

to restoring confidence in the judicial system and ensuring that such abuses of power do not continue unchallenged.

# ---- On Sat, 06 Jul 2024 12:56:08 -0400 MAA <<u>internalcommunications@mymaa.online</u>> wrote ---

Good Afternoon,

Your whistleblower system is flawed.

Persistent reports have been made concerning violations to the EEOC, incidents of data breaches, deceptive sales practices, harassment, intimidation, SEC violations, accounting discrepancies, safety concerns, HUD infractions, and more. Despite these reports, MAA has continuously retaliated since 2021 using harassment and intimidation tactics, lying through their whistleblower hotline, failing to provide independent assessments of their internal controls, withholding accurate records from the board and the public, and issuing misleading public statements.

It appears that MAA's endorsement of creating fraudulent orders, actions steeped in conflicts of interest and abuses of power, violates several established legal standards. This behavior not only raises ethical concerns under civil trial law but also contradicts the Tennessee Rules of Professional Conduct, specifically Rule 8.4 concerning misconduct which prohibits actions that are prejudicial to the administration of justice.

Moreover, these actions may breach the duty of candor towards the tribunal as stipulated in Rule 3.3 of the Tennessee Rules of Professional Conduct, by knowingly using false evidence or perpetuating a fraud in legal proceedings. The potential abuse of judicial resources for retaliatory litigation also touches on violations of Rule 1.3, which mandates diligence and prohibits actions that abuse legal procedures.

These issues are compounded by constitutional concerns under the Due Process Clause. The U.S. Supreme Court in *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), clearly established the necessity of judicial impartiality and addressed the risks of actual bias when parties with significant influence are involved in litigation, suggesting a critical review of such judicial relationships is necessary to uphold the integrity of the courts.

Furthermore, the involvement of MAA's senior team and executives in overlooking these serious ethical breaches aligns with an abuse of corporate power, potentially actionable under Section 1983 for violations of civil rights, which provides a remedy for misconduct involving any actor who causes the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.

The matter will be pursued vigorously until there is a comprehensive examination by regulatory bodies such as HUD, FTC, EEOC, SEC, IRS, and DOJ, ensuring MAA is held accountable for these alleged violations. This adherence to legal standards is not only a matter of regulatory compliance but also a fundamental aspect of justice.

Statements have been made alleging defamation by individuals, when, in fact, the issues and concerns raised are documented and verifiable through public sources. Simply conducting a search of the individuals involved reveals extensive information that challenges the claims made by MAA.

Case 2:23-cv-02186-SHL-cgc

# Document 113-7 Filed 07/08/24 Page 8 of 11 PageID 2142

Under the laws governing defamation, specifically under U.S. common law, a claim must prove that the information was made with knowledge of its falsity or with reckless disregard for the truth. Public figures, such as company executives in a corporate context, also bear the burden of demonstrating actual malice, as established in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Additionally, making false statements in legal proceedings is addressed under various statutes including perjury under 18 U.S.C. § 1621, which criminalizes knowingly making false material statements under oath in federal proceedings. Similarly, under Rule 11 of the Federal Rules of Civil Procedure, legal filings must be well-grounded in fact and warranted by existing law, thereby discouraging false statements in court documents.

Wishing everyone a reflective and safe 4th of July weekend.

To: <a href="mailto:swright@tnbar.org">swright@tnbar.org</a>; <a href="mailto:bordentar.org">bordentar.org</a>; <a href="mailto:bordentar.org">commaticar.org</a>; <a href="mailto:bordentar.org">bordentar.org</a>; <a href="mailto:bordentar.org">bordentar.org</a>; <a href="mailto:bordentar.org">bordentar.org</a>; <a href="mailto:bordentar.org">commaticar.org</a>; <a href="mailto:bordentar.org">bordentar.org</a>; <a href="mailto:bordentar.org">b

I apologize for the oversight; I forgot to include the attachment. I have the meta-data for the orders, which I have already presented to the court. However, it appears that the Western Tennessee Court does not see any issues with this situation.

Thank you for your understanding.

To: <a href="mailto:swright@tnbar.org">swright@tnbar.org</a>; <a href="mailto:lbrown@tnbar.org">lbrown@tnbar.org</a>; <a href="mailto:bennett@tnbar.org">lbrown@tnbar.org</a>; <a href="mailto:bennett@tnbar.org">bennett@tnbar.org</a>; <a href="mailto:bennett@tnbar.org">cbennett@tnbar.org</a>; <a href="mailto:bennett@tnbar.org">subject: Golwen and Kapellas Complaint</a>

Good afternoon,

I hope this message finds you well. I have a concern regarding a potential conflict of interest and ethical violation involving attorney John Golwen of Bass, Berry & Sims PLC and judicial law clerk Michael Kapellas, a former attorney with the same firm until 2020.

# Case 2:23-cv-02186-SHL-cgc Document 113-7 Filed 07/08/24 Page 9 of 11 PageID 2143

Both individuals have worked on numerous cases against me and are now involved in a retaliation case against me with MAA Mid-America Apartment Communities. Given their prior professional relationship and involvement in my cases, I believe this situation raises significant ethical questions.

I have provided meta-data to the Board of Professional Responsibility, Judicial Board, Circuit Executive, and DOJ, demonstrating that Mr. Kapellas authored at least seven biased orders against me. Despite this, I noticed that he was recently honored with an award. Instead of recognition, I feel his conduct should be scrutinized.

Please review the attached and the active case 2:23-cv-02186 for further details.

Thank you for your attention to this matter.

------ Forwarded message ------From: **Board of Professional Responsibility : Complaints, .** <<u>complaints@tbpr.org</u>> Date: Sat, Jul 6, 2024 at 9:32 AM Subject: New Complaint: 2024-11329-COMP

Dear Mr.

The Board of Professional Responsibility received your complaint against John Stone Golwen, and it has been assigned a complaint number of 2024-11329-COMP.

If you have not already submitted documentation supporting your complaint, please do so as soon as possible and include the provided complaint number. If the Board of Professional Responsibility does not receive supporting documentation within 30 days of filing the complaint, the complaint will be dismissed.

After receipt of your complaint and supporting documentation, the Board of Professional Responsibility will review your complaint for possible ethics violations. If the Board of Professional Responsibility opens an investigation, you will be provided with a new Investigation File Number. Send supporting documentation by the following means (being certain to include the Complaint Number):

Email: complaints@tbpr.org

Traditional Mail: 10 Cadillac Dr Ste 220 Brentwood, TN 37027

I am compelled to express my increasing frustration and grave concern regarding the persistent harassment and unfounded legal proceedings that have been directed against me since April 2023. These actions appear to be a clear attempt to retaliate against me for my role as a whistleblower, extracting the evidence I provided to federal authorities, and subjecting me to ongoing intimidation and harassment. Despite my previous formal complaints against Ms. Mills and Mr. Kapellas, there has been a conspicuous lack of response or remedial action from your board.

The potential collusion between your board and Mr. Golwen, a prominent attorney, raises significant ethical concerns. The apparent abuse of judicial power within this court, particularly involving its judicial law clerk and the law firm Bass, Berry & Sims PLC, further exacerbates these issues. My extensive research through the PACER system reveals substantial conflicts of interest permeating this case and others, warranting urgent and thorough investigation.

Under 28 U.S.C. § 455, judges and judicial officers are required to disqualify themselves in any proceeding where their impartiality might reasonably be questioned. This standard extends to situations involving prior relationships and potential conflicts of interest, which are evidently present in this case. The Code of Conduct for United States Judges mandates that judges must uphold and promote the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety in all activities. Canon 3 of this Code specifies that judges should perform the duties of the office fairly, impartially, and diligently, and should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.

The Western District of Tennessee Local Rules, particularly Rule 83.5, emphasize the necessity of maintaining high standards of professional conduct. The rule clearly stipulates that any conduct that compromises the integrity of the court must be addressed promptly and decisively. Despite these clear legal mandates, there has been a persistent failure to address the conflicts of interest and unethical behavior that I have reported. The professional relationship between the attorney in my case and the judicial law clerk should have been disclosed from the outset to avoid any appearance of bias. This non-disclosure is a serious breach of ethical conduct and undermines the fairness of the judicial process.

Moreover, the continued harassment and issuance of unfounded orders against me constitute an abuse of the judicial process. Such actions are not only unjust but also violate my rights under the Due Process Clause of the Fifth Amendment, which guarantees fair legal proceedings.

I have dutifully fulfilled my responsibility by reporting these serious issues to you, extending my concerns to both criminal and civil trial contexts. Additionally, I have communicated these matters to the Judicial Board, the Sixth Circuit Executive, and the Department of Justice. However, the lack of action and continued harassment I am experiencing suggests that these proceedings have become a spectacle for your amusement rather than a pursuit of justice. I urge you to take immediate and effective action to rectify these violations. I formally request an immediate judgment and the termination of the proceedings against me. The ongoing harassment and retaliatory actions are unacceptable and must be stopped to uphold the principles of justice and fairness. Your prompt and decisive response is crucial to restoring confidence in the judicial system and ensuring that such abuses of power do not continue unchallenged.

# EXHIBIT H

Case 2:23-cv-02186-SHL-cgc Document 113-8 Filed 07/08/24 PageID 2147

7/08/24 Page 2 of 5

From: Sent: To: Subject: Mail Delivery Subsystem <maybear1420@gmail.com> Saturday, July 6, 2024 5:19 PM Golwen, John S.; Thomas, Jordan; robert.delpriore@maac.com Mr. Noel Email

FYI - have a good day.

Dennis

------ Forwarded message ------From: **D P** <<u>maybear1420@gmail.com</u>> Date: Sat, Jul 6, 2024, 5:13 PM Subject: Re: 7/6/24 - Professional Board Responsibility Complaint To: <<u>randy.noel@butlersnow.com</u>> Cc: D P <<u>maybear1420@gmail.com</u>>

Mr. Noel,

In addition, over seven orders have been issued against me by Mr. Kapellas, as confirmed by metadata directly from the court docket. Mr. Kapellas and Mr. Golwen have collaborated on several cases, making any claim of no conflict of interest or abuse of power within that court system an outright lie.

I have endured over three years of relentless harassment by Mid-America Apartment Communities, Inc. (MAA) in an attempt to coerce information from me. They have sent people to my home, inundated me with text messages, emails, and calls, and spread lies throughout the company about my claims and sexuality. In 2021, they promised to provide me with a report of their findings, which could have easily resolved this entire issue. Instead, this outrageous retaliation and harassment have escalated to the point where they absurdly claim that I harassed them with fabricated accusations. They even created LinkedIn profiles mocking my mental state and falsely alleging that I have been deceitful throughout this ordeal.

Since April 2023, they have unlawfully subpoenaed my emails and supposed bank records, fabricating absurd accusations. Bass, Berry & Sims PLC has bombarded me with relentless mailings. I have voluntarily provided all these mailings to the DOJ to document this harassment.

This constant harassment has forced me to change my email, phone number, and other personal contact information. I am expected to endure these baseless attacks without recourse. Therefore, I respectfully request that Paige and the court issue the final judgment in my case. I will pay the judgment, appeal the decision, and move on.

If there are any questions or further clarifications needed, please do not hesitate to reach out.

Sincerely,

**Dennis Philipson** 

On Sat, Jul 6, 2024 at 4:57 PM Mail Delivery Subsystem <<u>maybear1420@gmail.com</u>> wrote: Thank you Mr. Butler for your declaration as well.

Please let me know if you need any other information.

Dennis Philipson

------ Forwarded message ------From: **Mail Delivery Subsystem** <<u>maybear1420@gmail.com</u>> Date: Sat, Jul 6, 2024 at 4:47 PM Subject: Fwd: 7/6/24 - Professional Board Responsibility Complaint To: <<u>tFischer@nsastorage.com</u>>, <<u>tfischer@nsareit.net</u>>

------ Forwarded message ------From: **Doo Crew** <<u>Authorcase@outlook.com</u>> Date: Sat, Jul 6, 2024 at 11:56 AM Subject: Golwen and Kapellas Complaint To: <u>swright@tnbar.org</u> <<u>swright@tnbar.org</u>>, <u>lbrown@tnbar.org</u><<u>kbelcher@tnbar.org</u>>, <u>kbelcher@tnbar.org</u>> <<u>kbelcher@tnbar.org</u>>, <u>cbennett@tnbar.org</u> <<u>cbennett@tnbar.org</u>> Cc: Doo Crew <<u>authorcase@outlook.com</u>>

Good afternoon,

I hope this message finds you well. I have a concern regarding a potential conflict of interest and ethical violation involving attorney John Golwen of Bass, Berry & Sims PLC and judicial law clerk Michael Kapellas, a former attorney with the same firm until 2020.

Both individuals have worked on numerous cases against me and are now involved in a retaliation case against me with MAA Mid-America Apartment Communities. Given their prior professional relationship and involvement in my cases, I believe this situation raises significant ethical questions.

I have provided meta-data to the Board of Professional Responsibility, Judicial Board, Circuit Executive, and DOJ, demonstrating that Mr. Kapellas authored at least seven biased orders against me. Despite this, I noticed that he was recently honored with an award. Instead of recognition, I feel his conduct should be scrutinized.

Please review the attached and the active case 2:23-cv-02186 for further details.

Thank you for your attention to this matter. Dennis Philipson

----- Forwarded message ------From: **Board of Professional Responsibility : Complaints, .** <<u>complaints@tbpr.org</u>> Date: Sat, Jul 6, 2024 at 9:32 AM Document 113-8 PageID 2149

Subject: New Complaint: 2024-11329-COMP To: Philipson, Dennis <<u>mikeydphilips@gmail.com</u>>

Dear Mr. Dennis Philipson,

The Board of Professional Responsibility received your complaint against John Stone Golwen, and it has been assigned a complaint number of 2024-11329-COMP.

If you have not already submitted documentation supporting your complaint, please do so as soon as possible and include the provided complaint number. If the Board of Professional Responsibility does not receive supporting documentation within 30 days of filing the complaint, the complaint will be dismissed.

After receipt of your complaint and supporting documentation, the Board of Professional Responsibility will review your complaint for possible ethics violations. If the Board of Professional Responsibility opens an investigation, you will be provided with a new Investigation File Number.

Send supporting documentation by the following means (being certain to include the Complaint Number):

Email: complaints@tbpr.org

Traditional Mail: 10 Cadillac Dr Ste 220 Brentwood, TN 37027

I am compelled to express my increasing frustration and grave concern regarding the persistent harassment and unfounded legal proceedings that have been directed against me since April 2023. These actions appear to be a clear attempt to retaliate against me for my role as a whistleblower, extracting the evidence I provided to federal authorities, and subjecting me to ongoing intimidation and harassment. Despite my previous formal complaints against Ms. Mills and Mr. Kapellas, there has been a conspicuous lack of response or remedial action from your board.

The potential collusion between your board and Mr. Golwen, a prominent attorney, raises significant ethical concerns. The apparent abuse of judicial power within this court, particularly involving its judicial law clerk and the law firm Bass, Berry & Sims PLC, further exacerbates these issues. My extensive research through the PACER system reveals substantial conflicts of interest permeating this case and others, warranting urgent and thorough investigation.

Under 28 U.S.C. § 455, judges and judicial officers are required to disqualify themselves in any proceeding where their impartiality might reasonably be questioned. This standard extends to situations involving prior relationships and potential conflicts of interest, which are evidently present in this case. The Code of Conduct for United States Judges mandates that judges must uphold and promote the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety in all activities. Canon 3 of this Code specifies that judges should perform the duties of the office fairly, impartially, and diligently, and should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.

The Western District of Tennessee Local Rules, particularly Rule 83.5, emphasize the necessity of maintaining high standards of professional conduct. The rule clearly stipulates that any conduct that compromises the

#### Case 2:23-cv-02186-SHL-cgc Document 113-8 Filed 07/08/24 Page 5 of 5 PageID 2150

integrity of the court must be addressed promptly and decisively. Despite these clear legal mandates, there has been a persistent failure to address the conflicts of interest and unethical behavior that I have reported. The professional relationship between the attorney in my case and the judicial law clerk should have been disclosed from the outset to avoid any appearance of bias. This non-disclosure is a serious breach of ethical conduct and undermines the fairness of the judicial process.

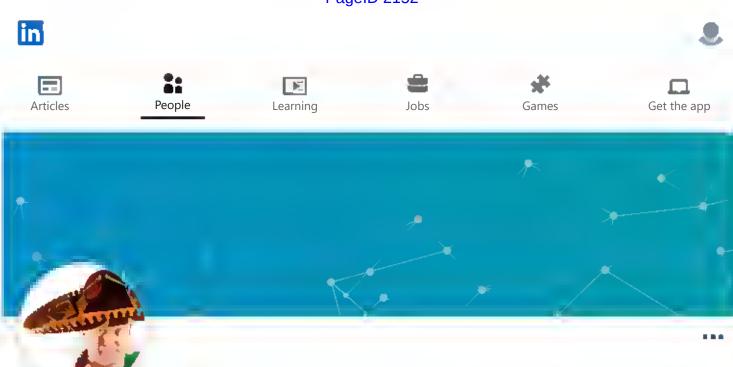
Moreover, the continued harassment and issuance of unfounded orders against me constitute an abuse of the judicial process. Such actions are not only unjust but also violate my rights under the Due Process Clause of the Fifth Amendment, which guarantees fair legal proceedings.

I have dutifully fulfilled my responsibility by reporting these serious issues to you, extending my concerns to both criminal and civil trial contexts. Additionally, I have communicated these matters to the Judicial Board, the Sixth Circuit Executive, and the Department of Justice. However, the lack of action and continued harassment I am experiencing suggests that these proceedings have become a spectacle for your amusement rather than a pursuit of justice.

I urge you to take immediate and effective action to rectify these violations. I formally request an immediate judgment and the termination of the proceedings against me. The ongoing harassment and retaliatory actions are unacceptable and must be stopped to uphold the principles of justice and fairness. Your prompt and decisive response is crucial to restoring confidence in the judicial system and ensuring that such abuses of power do not continue unchallenged.

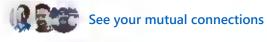
# EXHIBIT I

Document 113-9 PageID 2152



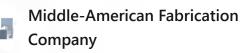
### **Dennis Philipson**

Advocate for employee rights, ethical company behavior and holding people accountable. Germantown, Tennessee, United States · Contact Info



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Message



# Experience

EVP of Sexual Harassment & Racial Discrimination Middle-American Fabrication Company Jan 2007 - Present · 17 years 6 months Memphis, Tennessee, United States I help employees stand up for their rights!

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General Manager at Meyerland Community Improvement Association

Houston, TX





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Dennis Philipson

EVP of Finance

Germantown, TN

### **Dennis Philipson**

I will help you with all your pest, insurance and sexual harassment needs!! Germantown, TN

### Dennis Philipson

President at Fairy Queen Clothing

United States

### **Dennis Philipson**

Head Lamaze Coach at Baby's Factory Inc

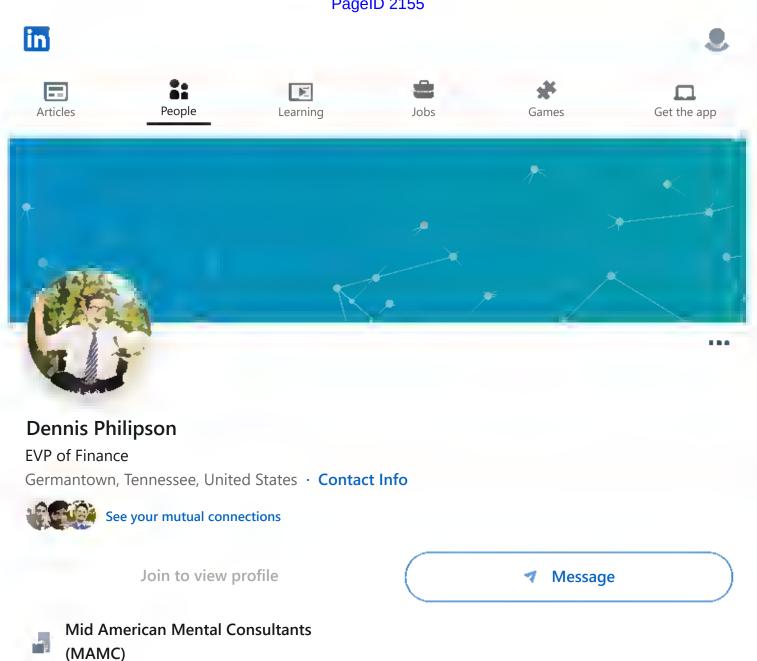
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# About

I am a master of finance & accounting. I am also a wiz at press releases and have many friends I went to school with in legal & accounting. Let me help your business grow illegally!

Document 113-9 PageID 2156



**EVP of Harassment & Disabilities** Mid American Mental Consultants (MAMC) May 2010 - Present · 14 years 2 months Germantown, Tennessee, United States

- Helping people grow their business illegally and while violating all types of securities and exchange laws.

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### Colleen Benecke

Columbus, Ohio Metropolitan Area



Monique Cordoba



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### **Dennis Philipson**

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### **Dennis Philipson**

President at Fairy Queen Clothing United States

### **Dennis Philipson**

Advocate for employee rights, ethical company behavior and holding people accountable. Germantown, TN

### **Dennis Philipson** Head Lamaze Coach at Baby's Factory Inc Washington, DC

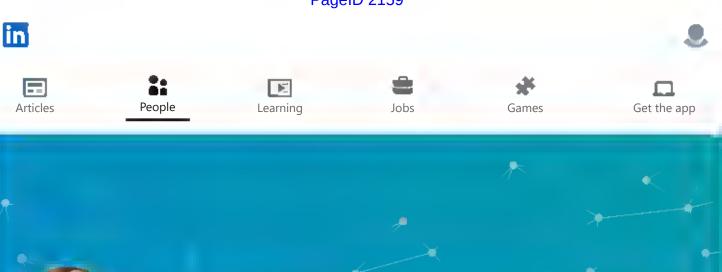
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. . .





I will help you with all your pest, insurance and sexual harassment needs!! Germantown, Tennessee, United States · Contact Info



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Deplorable Apartment Homes

### About

Looking for a new position as EVP or cashier.

Experience

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Document 113-9 PageID 2160

Filed 07/08/24 Page 10 of 12



EVP of Fumigation Deplorable Apartment Homes 2016 - Present · 8 years Germantown, Tennessee, United States

### **Forensic Accountant**

Moland Springs Jul 2008 - Sep 2016 · 8 years 3 months Atlanta, Georgia, United States

# View Dennis' full profile

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# People also viewed

### Monique Cordoba

General Manager at Meyerland Community Improvement Association

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Houston, TX

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# Others named **Dennis Philipson** in **United States**

**Dennis Philipson** EVP of Finance Germantown, TN

Dennis Philipson President at Fairy Queen Clothing United States

### **Dennis Philipson**

Advocate for employee rights, ethical company behavior and holding people accountable. Germantown, TN

### **Dennis Philipson**

Head Lamaze Coach at Baby's Factory Inc Washington, DC

12 others named Dennis Philipson in United States are on LinkedIn

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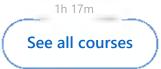
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Filed 07/08/24 Page 12 of 12

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# EXHIBIT J



# Message Summary

Subject Retaliation Judement

**Type** Secure Web Form

Documents None

**Created** Fri, 06/14/2024 - 09:37

# **Original Message**

Tamara Fischer, Edith Kelly-Green, James K. Lowder, Thomas H. Lowder, Claude B. Nielsen, William Reid Sanders, Gary S. Shorb, and David P. Stockert, along with MAA executives H. Eric Bolton Jr. (Chairman & amp; Chief Executive Officer), A. Bradley Hill (President, Chief Investment Officer), Timothy P. Argo (Executive VP, Chief Strategy & amp; Analysis Officer), Melanie M. Carpenter (Executive VP, Chief Human Resources Officer), Robert J. DelPriore (Executive VP, Chief Administrative Officer & amp; General Counsel), Amber Fairbanks (Executive VP, Property Management), Joseph P. Fracchia (Executive VP, Chief Technology & amp; Innovation Officer), A. Clay Holder (Executive VP, Chief Financial Officer), David C. Ward (Executive VP, Investments), Leslie B.C. Wolfgang (Senior VP, Chief Ethics & amp; Compliance Officer & amp; Corporate Secretary), Indrid Agaj (Senior VP, Director of New Construction), Scott Andress, Eugenia McGown, Jay Blackman (Regional Vice President), as well as MAA outside counsel Paige Mills, John Gowen, Michael Kappallas, and the firm Bass Berry & amp; Sims PLC, are attempting to wrongfully retaliate against me in court by pursuing a judgment exceeding \$330,000.

I am prepared to have my trust cover the amount sought, contingent upon the expedited processing of the billing. Since 1995, Eric, Leslie, AI, and others have been involved in creating numerous shell companies to facilitate a range of illicit activities. This long-term scheme includes antitrust violations, securities fraud, and extensive business fraud, all of which I have extensively documented and reported to the government. Additionally, I have submitted detailed evidence of unethical and fraudulent actions by the Western Tennessee Federal District Court, resulting in over 100 communications sent to Washington, D.C. The depth and persistence of these activities might evoke comparisons to the legal thriller "The Firm," where

#### 7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Donosite indicate in the second state of the second secon

systemic corruption within powerful institutions is dramatically unveiled.

Moreover, the case encompasses severe issues beyond financial misconduct, including serious violations related to the civil rights of residents and employees, as well as breaches of disability rights within the operations of employee relations and human resources departments. These transgressions underscore a pattern of systemic and exploitative practices adopted by the organization, highlighting both the scale and the impact of the wrongdoing involved.

This case not only reflects the specific misdeeds within our organization but also has broader implications across the industry, similar to the revelations in the AMD case. In that situation, a courageous insider worked in conjunction with the Department of Justice to reveal widespread price-fixing activities among major tech companies. This breach of trust not only violated the Sherman Antitrust Act by illegally manipulating market prices but also highlighted a pervasive culture of collusion aimed at stifling competition and innovation.

The whistleblower's actions in the AMD scenario, much like in our own case, were pivotal in initiating government investigations that eventually led to significant legal actions against the perpetrators. This collaboration with law enforcement is instrumental in upholding the principles of fair competition as mandated by law. Specifically, price-fixing activities breach Section 1 of the Sherman Act, which outlaws all agreements among competitors to fix product prices, limit production, or rig bids, practices that were evidently followed by those involved in our related schemes.

The role of whistleblowers in such contexts cannot be overstated—they serve as the eyes and ears on the ground, often at great personal risk. Their willingness to come forward not only helps enforce the law but also serves to maintain corporate and public integrity by exposing actions that may otherwise remain hidden from public scrutiny. These individuals are protected under various statutes such as the Dodd-Frank Act and the Sarbanes-Oxley Act, which provide mechanisms for their protection and ensure they are not retaliated against for their disclosures.

Such cases underscore the necessity for rigorous enforcement of antitrust and securities laws and demonstrate the crucial role of internal actors in coming forward to disclose wrongdoing. As more of these instances are brought to light, they serve as a deterrent to similar practices elsewhere in the industry, promoting a more ethical and competitive business environment. Throughout the five years I worked there, price-fixing activities were not just occasional lapses; they were a systematic part of the business strategy, making any claims to the contrary patently false. Our organization, in collaboration with RealPage, used its software platforms to orchestrate and maintain rental price agreements among competitors. This practice directly constitutes price-fixing under the Sherman Antitrust Act (15 U.S.C. § 1), which has been consistently held illegal in landmark cases such as United States v. Trenton Potteries Co., 273 U.S. 392 (1927), and United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940). These cases underscore the illegality of any agreement among competitors to fix prices, establish market shares, or control market conditions.

Moreover, the misuse of RealPage software to manipulate market prices challenges our organization's status as a legitimate real estate investment trust (REIT). By engaging in such practices, the organization is potentially violating the ethical and financial transparency requirements expected of REITs, particularly those related to honest market participation and fair financial reporting. There's an underlying scheme to hide profits and manipulate financial statements, which is a severe breach of both federal securities laws and REIT regulations. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, whistleblowers like

7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Dansatenover filesower Filesower

myself who report securities fraud are afforded protection from retaliation (15 U.S.C. § 78u-6(h)). This is critical, as it ensures that insiders can come forward without fear of retribution. Additionally, the Clayton Act (15 U.S.C. § 15) empowers individuals harmed by antitrust violations to seek treble damages, thereby providing a substantial remedy for the financial and market distortions caused by such illegal activities.

I am bringing these issues to light through the whistleblower line not just to contest the retaliation I have faced but also to press for a thorough investigation and accountability. Ensuring compliance with antitrust and securities legislation is essential for maintaining the integrity of our financial markets and the trust of investors, employees, and the public. I am wondering whether there will be further FBI investigations akin to the one that occurred at Cortland Property Management in Atlanta. Such actions are essential to uncover and address illegal practices within the industry. It's crucial to remember that any attempt to destroy evidence in anticipation of or during such investigations constitutes obstruction of justice, a serious federal offense that could lead to additional legal consequences beyond the initial charges related to antitrust or fraud violations.

# Comments

Displaying 1 - 25 of 68

### Created

Thu, 07/04/2024 - 12:21

1) Direct Transmission to the Audit Committee: The Whistleblower Policy asserts that reports are initially reviewed by in-house legal counsel before being shared with the Audit Committee. This seems contradictory to claims of direct and immediate access by the Audit Committee. Can you clarify why there is an intermediary stage involving legal counsel when the policy suggests direct communication to the Audit Committee? What safeguards are in place to prevent this initial review from filtering or altering the reports that reach the committee?

Distribution of Reports within the Audit Committee:

3) How is the distribution of reports managed among Audit Committee members? Specifically, does the longstanding chairman of the committee have sole discretion over which reports are escalated to the entire committee, or are all members granted equal access to these reports upon their receipt? This question probes the potential for bias or unilateral decision-making by a single committee chairperson. Involvement of Senior Committee Members in Report Review:

4) With the Audit Committee chaired by a member since 2002, how does the tenure of the chair affect the impartiality and thoroughness of investigations into whistleblower claims, especially those that might implicate longstanding practices or management members known to the chair?

Mechanisms for Independent Review:

5) Given potential conflicts of interest, particularly in cases involving senior management, what independent mechanisms are in place to review the actions and decisions of the Audit Committee, including the initial handling and subsequent investigations of

7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Domoster industrie Bower Edec Monage Back Page 5 of 27

whistleblower reports? Are there provisions for engaging external advisors or auditors to ensure unbiased review of sensitive claims? Transparency and Accountability in Handling Reports:

6) Can you detail the procedural steps taken once a whistleblower report is received by the Audit Committee? This includes clarifying whether reports are summarized or presented in full, the criteria used for escalating certain issues while possibly downplaying others, and the transparency of these processes to stakeholders, particularly in annual reports or other public disclosures.

Emergency Procedures for Whistleblower Reports:

7) What specific emergency procedures are in place for handling whistleblower reports that involve urgent or severe allegations, particularly those that might significantly impact the company's financial integrity or legal standing? How quickly are these reports escalated to the Audit Committee, and what measures are in place to convene emergency sessions if needed?

Role of External Advisors in the Investigation Process:

8) What is the protocol for involving external legal or audit advisors in the investigation of whistleblower reports implicating senior management? How does the Audit Committee ensure that these advisors are truly independent, and what criteria are used to select them?

Audit Committee's Access to Full Reports vs. Summarized Information:

9) Concerning the summaries provided to the Audit Committee by legal counsel, how does the Audit Committee verify the completeness and accuracy of these summaries? Is there a process for the Audit Committee members to access full whistleblower reports upon request, and under what circumstances would they exercise this option? Handling of Whistleblower Complaints Against High-Ranking Officials:

10) What specific safeguards are in place to ensure the impartial handling of whistleblower complaints that directly involve high-ranking officials or long-standing members of the company, such as the EVP of General Counsel or the CEO? How is the independence of the Audit Committee upheld in these scenarios? Disclosure Practices to Shareholders and Stakeholders:

11) How are the findings from whistleblower investigations reported back to shareholders and other stakeholders? Are summaries of these findings included in the company's annual reports or other public disclosures, and what level of detail is provided to ensure transparency while maintaining confidentiality?

### Created

Wed, 07/03/2024 - 23:25

Regarding your statement, specifically, "We will provide the Audit Committee with all of your submissions on this thread and discuss with them our process and results," could you please clarify the following points?

My understanding is that both methods deliver your message directly and immediately to the Audit Committee representatives.

Investigations are overseen by the Audit Committee of the Board of Directors and may involve certain members of company management depending on the submission. Given this, why would there be a need to provide the Audit Committee with my submissions if they were sent to them immediately?

Thank you for your clarification.

Created Tue, 07/02/2024 - 13:09 Mr. Philipson,

Your continued abuse of our whistleblower platform is a violation of the Order issued against you by the United States District Court for the Western District of Tennessee on May 6, 2024. I refer you to Paragraphs 8, 9, and 11 of the Order which prohibit you from contacting any MAA Person, as such term is defined in the Order, without their written consent, among other things. Paragraph 12 of the Order permits you to make whistleblowing complaints or otherwise communicate with a government agency about your concerns. We encourage you to do so.

We have reviewed each submission, investigated as necessary, and concluded that none of them indicate any questionable accounting, internal accounting controls or auditing matters have occurred. Accordingly, we have not taken any corrective actions, and we have closed your submissions. We will provide the Audit Committee with all of your submissions on this thread and discuss with them our process and results.

In terms of your submissions from 2021, as we advised you at the time, we concluded that none of them indicated any questionable accounting, internal accounting controls or auditing matters and no corrective actions were taken prior to the closing of the submission. This conclusion was also shared with the Audit Committee.

Please cease all communications with MAA Persons, whether through our whistleblower portal or otherwise, including through bcc emails to various MAA Persons.

### Documents

 1 - FAQ.png (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2024-07-03/1%20-%20FAQ.png?language=en)
 261.98 KB

Created Wed, 07/03/2024 - 23:12

Attached for your damage claims.

#### Documents

 7-3-24 - Gmail - Notice of Intent to File a Lawsuit for Retaliation.pdf
 (https://www.whistleblowerservices.com/maa/system/files 117.08 KB

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7-3-24 - Email to Court.pdf (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2024-07-03/7-3-24%20-%20Email%20to%20Court.pdf? 193.08 KB language=en) 193.08 KB 7-3-24 - Notice to Appeal - West Tenn - Lipman and Kapallas.pdf (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2024-07-03/7-3-24%20-%20Notice%20to%20Appeal%20-%20West%20Tenn%20-%20Lipman%20and%20Kapallas.pdf?language=en)

282.67 KB

Created Wed. 07/03/2024 - 23:09

otice of Intent to File a Lawsuit for Retaliation Mason Behr Wed, Jul 3, 2024 at 8:03 PM To: robert.delpriore@maac.com, eric.bolton@maac.com, Deborah.Caplan@nexteraenergy.com, ethics@maac.com, employee.relations@maac.com Cc: maybear1420@gmail.com

Dear Ms. Caplan, Mr. Bolton, Mr. Delpriore, MAA Ethics Department, Employee Relations and Board of Directors,

Ms. Caplan, My apologies for contacting you directly, but the ethics team refused to provide me with a contact for the Board of Directors regarding my recent whistleblower complaints. Additionally, your name was mentioned during the deposition against me. Any letters mailed to the board are directed to Ms. Wolfgang, who also manages the whistleblower hotline. Additionally, she has made numerous false and speculative accusations against me in this absurd trial involving extreme bias and abuse of power. Consequently, I am uncertain if any of my previous correspondence has actually reached the board

I am unsure if the board has reviewed my initial whistleblower submission from 2021, as well as the numerous submissions I began making in June of 2024, including a detailed 100-page document that outlines my experiences over the last four years with MAA, its executives as well as the Western Tennessee federal court system. I believe these experiences reveal severe unethical practices. It has come to my attention that the audit committee does not review certain internal controls, which are only examined by management, a practice that seems questionable at best. I am prepared to address these issues directly to their faces, without the need to hide behind a lawyer or anonymous email accounts.

First and foremost, please be advised that I will be appealing any final judgment and all interlocutory judgments against me in the "trademark infringement" case in the Western District of Tennessee.

Secondly,I am writing to formally notify Mid-America Apartment Communities, Inc. (MAA) and its subsidiaries of my intent to file a lawsuit for retaliation. This lawsuit will be filed in the United States District Court for the Northern District of Georgia where the majority of their subsidiaries are located.

I engaged in protected whistleblowing by reporting suspected illegal and unethical conduct by MAA to the SEC and other authorities. In response, MAA and its subsidiaries have retaliated against me through:

7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Domostrationater industrie Bower Edised Monage 8 of 27

- Unlawful surveillance and monitoring PageID 2170
- Tampering with my personal and electronic mail
- Filing baseless legal claims and motions
- Making defamatory statements

These actions have caused significant harm, including emotional distress, reputational damage, and financial losses.

Legal Basis for the Lawsuit:

- 1. Violation of the Sarbanes-Oxley Act (SOX)
- 2. Violation of the Dodd-Frank Act
- 3. Violation of State Whistleblower Protection Laws
- 4. Defamation
- 5. Intentional Infliction of Emotional Distress

Subsidiaries Involved:

The lawsuit will include the following Atlanta-based subsidiaries:

- 3630 South Tower Residential, LLC
- 98 San Jac Holdings, LLC
- PAH Lender, LLC
- Park Land Development, LLC
- PBP Apartments, LLC
- PF Apartments, LLC
- PL Conservation, LLC
- Post 1499 Massachusetts, LLC
- Post Alexander II, LLC
- Post Asset Management, Inc.
- Post Carlyle I, LLC
- Post Centennial Park, LLC
- Post Corners, LLC
- Post Galleria, LLC
- Post Hyde Park, LLC
- Post Midtown Atlanta, LLC
- Post Midtown Square GP, LLC
- Post Midtown Square, L.P.
- Post Park, LLC
- Post Park Development, LLC
- Post Parkside at Wade II GP, LLC
- Post Parkside at Wade II, L.P.
- Post Services, LLC
- Post South End GP, LLC
- Post South End, L.P.
- Post Wade Tract M-2, L.P.
- Rise Condominium Development, LLC

Abuse of Power and Misconduct in Tennessee Court:

7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Donosten indication over Filed Maraga Balance Page 9 of 27

- Conflict of Interest: The involvement of the Judicial law clerk, Michael Kapellas, who previously worked with Plaintiff's law firm, raises serious conflicts of interest and violates the principles of judicial impartiality as outlined in 28 U.S.C. § 455

- Unlawful Subpoenas: The court has improperly issued subpoenas to obtain my personal and electronic records without proper justification, violating my privacy rights and legal protections.

- Intimidation Tactics: I have been subjected to various forms of intimidation designed to harass and dissuade me from pursuing my whistleblower claims. These tactics include unwarranted legal actions, defamatory statements, and invasive surveillance practices.

- Procedural Irregularities: The court's handling of evidence and misuse of subpoenas have severely compromised the integrity of the judicial process. Key decisions were made without sufficient evidence, and the sanctions imposed were disproportionately severe and unsupported by the facts of the case.

These actions have collectively violated my right to a fair trial and due process.

Thank you, Dennis Philipson PO Box 30142 Alexandria, VA 22310

Created

Wed, 07/03/2024 - 17:45

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

Plaintiff, MID-AMERICA APARTMENT COMMUNITIES, INC (MAAI & amp; MAA-PI)., MID-AMERICA APARTMENT COMNUNITIES, LLC., MID-AMERICA APARTMENTS L.P (MAA)

Alabama CPSI, LLC CPSI-UCO Spanish Oaks, LLC CPSI-UCO, LLC Highway 31 Alabaster Two, LLC Highway 31 Alabaster, LLC Delaware 10th Apartments, LLC 1499 Massachusetts Avenue, Inc. 1499 Massachusetts Holding, LLC CC Daybreak, LLC CC Val Vista, LLC CC West Midtown, LLC Colonial Commercial Contracting, LLC

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Downshimer Meril Wisheblower Desel No.74026624 Page ID 2172

Colonial Construction Services, LLC Heathrow 4, LLC MAA Alloy, LLC MAA Arkansas REIT, LLC MAA Holdings, LLC MAA WWARRS, LLC Post Carlyle II, LLC Sand Lake 2019, LLC Stone Ranch at Westover Hills, LLC

#### Florida

MAA Westshore Exchange LLC

#### Georgia

3630 South Tower Residential, LLC 98 San Jac Holdings, LLC PAH Lender, LLC Park Land Development, LLC **PBP** Apartments, LLC PF Apartments, LLC PL Conservation, LLC Post 1499 Massachusetts, LLC Post Alexander II, LLC Post Asset Management, Inc. Post Carlyle I, LLC Post Centennial Park, LLC Post Corners, LLC Post Galleria, LLC Post Hyde Park, LLC Post Midtown Atlanta, LLC Post Midtown Square GP, LLC Post Midtown Square, L.P. Post Park, LLC Post Park Development, LLC Post Parkside at Wade II GP. LLC Post Parkside at Wade II, L.P. Post Services, LLC Post South End GP, LLC Post South End, L.P. Post Wade Tract M-2, L.P. **Rise Condominium Development, LLC** 

#### Tennessee

Brighter View Insurance Company, LLC Mid-America Apartments, L.P. Texas

Akard-McKinney Investment Company, LLC MAA of Copper Ridge, Inc.

V.

DENNIS MICHAEL PHILIPSON, Defendant.

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Notice of Appeal to the United States Court of Appeals for the Sixth Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

To the Clerk of the Court and all parties concerned:

Notice is hereby given that Dennis Michael Philipson, the Defendant in the abovecaptioned case, intends to appeal to the United States Court of Appeals for the Sixth Circuit from the final judgment entered in this action by the United States District Court for the Western District of Tennessee on May 6, 2024, and all interlocutory orders leading to the judgment. This notice is to inform the Court of the Defendant's intention to challenge the decision based on claims of judicial error, procedural irregularities, and violations of constitutional rights that critically affected the fairness and integrity of the trial proceedings.

The grounds for the forthcoming appeal include, but are not limited to:

1. Judicial Misconduct and Bias: The trial was marred by evident judicial misconduct and bias, where the presiding judge exhibited clear partiality towards the Plaintiff, disregarding standard judicial procedures and the fundamental principles of fairness. The involvement of the judicial law clerk, who previously worked with Plaintiff's law firm, raised unresolved conflicts of interest.

2. Procedural Irregularities and Abuse of Process: The court engaged in procedural irregularities, including the mishandling of evidence and misuse of subpoenas, which undermined the integrity of the judicial process. Key decisions were made without sufficient evidence, and the sanctions imposed were disproportionately severe and not supported by the facts of the case.

3. Violation of Constitutional Rights: The Defendant's constitutional rights, including the right to a fair trial and due process, were compromised. The court's failure to allow adequate time for preparation and response to the Plaintiff's motions denied the Defendant the opportunity to effectively participate in his defense.

4. Erroneous Legal Rulings: The court made several erroneous legal rulings, particularly concerning the application of the law regarding sanctions, permanent injunctions, and the interpretation of actions as constituting trademark infringement and cyber harassment.

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The Defendant will proceed with filing the formal Notice of Appeal in accordance with the rules and timeline stipulated by the Federal Rules of Appellate Procedure. Dated this 3rd day of July, 2024. Respectfully submitted, /s/ Dennis Michael Philipson Defendant, Pro Se 6178 Castleton Way Alexandria, VA 22310

### Created

Wed, 07/03/2024 - 17:45

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2024, a true and correct copy of the foregoing Notice of Intent to Appeal was served via electronic mail and United States Postal Service upon the following: Counsel for Plaintiff: Bass, Berry & amp; Sims PLC

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 150 3rd Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200 pmills@bassberry.com

/s/ John Golwen\_\_\_\_\_ John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & amp; SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com Jordan.thomas@bassberry.com Counsel for Mid-America Apartment Communities, LLC

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant, Pro Se

### Created

Wed, 07/03/2024 - 15:26

Dear Attorney General Mayes, Attorney General Stein, and Attorney General Skrmetti, I am writing to bring to your attention certain retaliatory actions I have faced, initiated through a lawsuit by Mid-America Apartment Communities, Inc. (MAA). After filing a whistleblower complaint through their internal hotline in 2021, I have been subjected to severe harassment via a contrived lawsuit. This action appears aimed at extracting information I had previously provided to government agencies. Furthermore, I recently came across news on price fixing and an antitrust lawsuit, which resonated with the issues I reported in 2021. 7/4/24, 12:39 Phase 2:23-cv-02186-SHL-cgc Dana Marine David Marine Dav

Additionally, MAA employees, including a former attorney of Bass, Berry & amp; Sims PLC who is now serving as a judicial law clerk, appear to have colluded with MAA's ethics and whistleblower hotline to misuse the court system as a tool of retaliation. This litigation has been used to harass, intimidate, and attempt to extract sensitive information from me. A review of the court docket clearly demonstrates this blatant abuse of power. I have attached pertinent documents that I believe will be valuable to your ongoing investigations into similar matters. Despite continuous reports of misconduct through MAA's whistleblower hotline, the responsible employees have failed to conduct any meaningful investigation. It seems that the Hotline and Ethics department may be compromised by long-term employees who are deeply aligned with MAA's corporate interests.

Given the recent state probes into related issues, I believe the information I am providing could be instrumental to your investigations.

Thank you for your attention to this matter.

Sincerely,

Dennis Philipson

### Created

Wed, 07/03/2024 - 15:00

To update the esteemed ethics team and company executives, including Eric Bolton, Tim Argo, and Leslie Wolfgang, on recent developments relevant to the internal investigation: key information has been provided today to the Dallas Express and the city council. It is requested that Mr. Kapallas, formerly with Bass, Berry & amp; Sims PLC and currently serving as a Judicial Law Clerk, includes this information in the evaluation of damages.

### Created

Wed, 07/03/2024 - 14:41

I have some items for the city council. I must of wrote this:

Local City Council Examines State and Federal Laws Due to Rent Increases APRIL TOWERY | CANDY'S DIRT

JUL 3

Money House | Image by Lemonsoup14/Shutterstock

(Candy's Dirt) – Landlords across the country are facing lawsuits for profiting off inflated rent prices, and the Dallas City Council is lending its support to state and federal legislation to protect tenants.

Legislative Director Clifford Sparks reviewed a Jan. 8 memorandum about the city's legislative priorities related to housing and homelessness at a committee meeting last month.

"This legislation is going to get written before we even get into session and they're going to have their ideas fleshed out ahead of time," Sparks said, encouraging feedback as soon as possible.

The 2025 Texas legislative session begins in January.

Right to Cure

This memorandum, filed by Housing and Homelessness Solutions Committee Chair Jesse Moreno, outlines the panel's proposed legislative priorities.

Dallas policymakers have expressed particular interest in offering a "right to cure" provision for renters, which gives tenants extra time to pay before facing eviction. It ensures "what some call a right for renters to 'cure' the late rent before losing their homes," KERA reported in August 2023.

The legislation was intended to codify the COVID-era eviction ordinances that set in place time frames for a right to cure, Director of Legislative Affairs Carrie Rogers said.

A majority of Housing Committee members supported moving forward with support of such legislation. Councilwoman Cara Mendelsohn opposed it, saying she didn't think it was likely to happen.

Protecting Rental Subsidies From Landlord Discrimination

However, Housing Committee members did not want to move forward with support of legislation "protecting rental subsidies from landlord discrimination."

Councilwoman Cara Mendelsohn said she was opposed to legislation requiring landlords to accept rental subsidies, also known as vouchers.

"The problem is that accepting vouchers comes with a lot of extra paperwork and inspections that can often leave a landlord with multiple months of no payment," she said. "There are also additional eviction protections that I believe would unfairly burden some landlords."

Dallas already implemented a "faux" master lease program and there are other ways to ensure that voucher-holders have places to rent, Mendelsohn added.

"Now the problem is finding the voucher, it's not finding the place that will accept the voucher," she said.

Councilman Chad West said he didn't think a municipality could force landlords to accept vouchers.

Rogers said state and federal law dictates that a landlord can't be required to accept a voucher but they also can't discriminate against someone because they are a voucher-holder.

### Landlord Profiteering

The six largest publicly-traded apartment companies reported nearly \$300 million combined in increased profits for the first quarter of this year, thanks to significant rent increases, according to a national report on landlord profiteering released June 12 by Accountable US.

Accountable US is an independent, nonpartisan corporate watchdog based in Washington D.C.

7/4/24, 12:39 PICase 2:23-cv-02186-SHL-cgc Documentative December 1 Weise Down Files Markow Page 15 of 27 Notably, all six landlords — Mid-America Apartments, AvalonBay Communities, Equity Residential, Essex Property Trust, Camden Property Trust, and UDR — have faced lawsuits related to their use of troubled property management software company, RealPage, said Emily Hoyle, deputy press secretary for Accountable US.

"Among our findings, the largest publicly-traded apartment owner, Mid-America Apartments, saw its net income jump 6 percent to \$147.6 million, allowing the company to spend \$176.2 million on shareholder dividends and distributions, i.e. extra rewards to wealthy investors," Hoyle told CandysDirt.com. "Did the company really need to raise rent so high? Did they need to squeeze any more at all out of families? Based on their own earnings report, we'd argue no."

RealPage, based in Richardson, laid off hundreds of workers in the midst of a massive class action lawsuit alleging large-scale price fixing, although the company contends the cuts are aimed at "accelerating its business growth in 2024 and beyond," The Real Deal reported Friday.

In Dallas, Mid-America Apartments has 10,116 units; Camden Property Trust has 6,224 units; and UDR has 5,813 units (as of March 31). Mid-America Apartments has 3,687 units in Fort Worth.

"Last November, Accountable US sent letters to nine state Attorneys General urging them to look into whether the rental companies sued in D.C. for illegal rent-pricing fixing may also be engaging in the same behavior in their states where the companies also run thousands of rental properties," Hoyle said. "Since then, the AGs in Arizona and North Carolina have launched probes on the matter."

Texas was not on the list.

#### Created

Tue, 07/02/2024 - 21:36

### Partial Metadata Info

Documents	
5.png (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-02/5_0.png?language=en)	375.61 KB
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#### Created

Tue, 07/02/2024 - 21:34

I was reviewing my whistleblower submission to ensure all necessary information is included, and I realized there is still a lot more to add. As I re-read your comment, I was perplexed by the following statement: "including through BCC emails to various MAA persons." Why doesn't your IT department block the use of BCC in your organization? You still use Mimecast, don't you? Why would you even allow BCC and not block or quarantine those emails?

To block or quarantine BCC emails in Mimecast, create a policy to block and quarantine emails with BCC recipients.

You speculate that I created a website, sang songs, wrote reviews, or wrote news articles that Leslie supplied as evidence. I thought the IT team was so great, given that they were able to stop a data breach in 2019, but they cannot even stop an email that you speculate I sent? Furthermore, I had inmates contact me from Tennessee recently; should I speculate they came from MAA? This raises serious questions about the true source of the alleged emails and the reliability of your claims.

In civil trials, speculation and unfounded claims are inadequate to meet the burden of proof. As established in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), the Supreme Court emphasized that there must be a genuine issue for trial, and mere speculation is insufficient to avoid summary judgment. Similarly, Ashcroft v. Iqbal, 556 U.S. 662 (2009), reinforced the need for factual allegations to state a plausible claim for relief, not just speculative or conclusory statements.

Improperly subpoenaing personal information based on speculation is also wrongful. In Brown v. State, 817 S.W.2d 399 (Tex. Crim. App. 1991), the court held that a subpoena must be based on a legitimate need for the information sought and not on mere speculation or fishing expeditions. This principle protects individuals from unwarranted invasions of privacy and ensures that subpoenas are used judiciously and appropriately.

I find it hard to believe your IT department cannot even create a simple Mimecast policy. I speculate you're creating any emails you claim I sent in an effort to further legitimize your unfounded harassment against me. Therefore, the speculative nature of the claims against me and the improper attempts to subpoen apersonal information further undermine the credibility and legality of the actions taken.

### Created

Tue, 07/02/2024 - 16:38

Could one honestly imagine that I would persist in this complex and drawn-out endeavor for over three years without harboring a pivotal, undisclosed asset?

By the way, it has come to my attention that there may be instances of your employees writing fake reviews. Please consider investigating this matter thoroughly. Under laws such as the Federal Trade Commission (FTC) Act, engaging in deceptive advertising practices, including the posting of misleading or fraudulent reviews, is illegal. Such actions can harm consumers by distorting their perceptions and decision-making processes. It is

important to ensure compliance with these regulations to maintain integrity and fairness in business practices.

It seems clear that numerous properties attempt to obscure 1-star reviews by posting a succession of fake 5-star reviews.

To reiterate, managing your own insurance program, especially through numerous subsidiaries, is fraught with legal and regulatory challenges and is generally discouraged. Such practices can violate multiple legal standards, including the Sarbanes-Oxley Act, which demands rigorous internal controls and financial reporting, and the Dodd-Frank Act, which calls for enhanced transparency and corporate governance. Additionally, managing insurance across various subsidiaries can obscure liabilities and complicate legal accountability, potentially breaching state insurance regulations and SEC requirements that mandate clear disclosures about operational risks. This setup can also contravene corporate transparency and accountability standards, as it muddles direct management structures that should be transparent and accountable. If your employees are under the impression that these practices are legal, it likely stems from a significant oversight or misrepresentation by upper management regarding the legal implications and requirements of such an insurance management strategy. It is crucial for your company to reevaluate its approach to ensure it aligns with legal and ethical standards.

### Created

Tue, 07/02/2024 - 16:01

One final note for today, Judy Easley, Court Clerk and known associate of Michael Kapallas, Added and Terminated Judges, Specifically Judge Lipman, to this case on April 17 at 12:33 PM. Given their connection, this raises serious concerns about the impartiality of the judicial process. In accordance with the Local Rules of the United States District Court for the Western District of Tennessee, specifically LR 83.8, case assignments are to be conducted through a method that ensures random distribution among judges. This rule is designed to prevent any potential biases and maintain the integrity of judicial proceedings.

Thank you again for your time.

### Created

Tue, 07/02/2024 - 15:42

I will request this again: like almost every other publicly traded company, please provide a direct method to communicate with your board of directors, ensuring that this channel is not intercepted by Leslie Wolgang or any other corporate personnel. Corporate governance best practices and regulations, such as those outlined in the Sarbanes-Oxley Act of 2002, encourage transparency and the establishment of mechanisms for reporting ethical concerns directly to the board, particularly in matters related to financial and accounting issues. This approach supports accountability and the proper resolution of significant concerns.

7/4/24, 12:39 Place 2:23-cv-02186-SHL-cgc

### Created

Tue, 07/02/2024 - 15:33

The recent change in MAA's designation from Inc to LP on June 3rd occurred without any public filing. In addition, If there is an expectation within MAA to simply sign a settlement with HUD, FTC, EEOC, or any other regulatory body, pay a fine, and not admit any fault, then that expectation is highly mistaken.

#### Documents

SEC gov EDGAR Full Text Search 1.pdf (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2024-07- 12.17 MB 02/SEC%20gov%20%20%20EDGAR%20Full%20Text%20Search%201.pdf?language=en)

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Tue, 07/02/2024 - 15:33

In light of the serious issues I have observed and reported, I will persistently monitor Mid-America Apartment Communities, Inc. (MAA) by reviewing the news, SEC filings, observing changes in stock symbols, such as the recent change from Inc to LP on June 3rd, reading articles, court filings, and more. I am committed to continuously updating the whistleblower system with relevant information every day.

This vigilance is essential to ensuring that all potential misconduct within MAA is brought to light and appropriately addressed. It is my responsibility to continue this scrutiny to safeguard the interests of shareholders and the public.

Happy Independence Day.

### Created

Tue, 07/02/2024 - 15:30

Given my direct observations of deceitful practices, outright falsehoods, and exploitation of the public by Mid-America Apartment Communities, Inc. (MAA), it is not only reasonable but imperative to question the ethics, integrity, and decision-making processes within your company. Utilizing the whistleblower system to highlight these issues is not just an option but a necessity, as I have been a firsthand witness to these transgressions.

The legal framework surrounding corporate disclosures and fraud includes crucial provisions that extend beyond just protecting whistleblowers from retaliation. Importantly, engaging in fraudulent activities does not shield corporate lawyers or any other executives from liability. The hiding of financials, moving funds, and adding subsidiaries in a manner that may be construed as deceptive or intended to obscure financial truths directly contravenes the Securities Exchange Act of 1934 and the relevant provisions of the Sarbanes-Oxley Act of 2002, which are designed to ensure transparency and fairness in corporate financial reporting.

Furthermore, your use of court orders to restrict my communications to government agencies like the EEOC, under the guise of legal compliance, is deeply concerning. This misuse of legal instruments to inhibit my free speech and right to disseminate true information about potential wrongdoing within MAA clearly violates constitutional 7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Double manufacture of 11 Mais allower Files Marine Marine Page 19 of 27

protections and potentially constitutes an abuse of process. Such actions are not only legally questionable but ethically indefensible, undermining the very foundations of transparent and accountable corporate governance.

These concerns, coupled with my duty to report unethical and illegal behavior through established whistleblower channels, underline the necessity for immediate and thorough investigations. The issues I've raised demand rigorous scrutiny to ensure compliance with all applicable laws and to uphold the ethical standards expected of all publicly traded companies.

### Created

Tue, 07/02/2024 - 15:24

I observed false statements during your presentation at the NAREIT conference on June 3rd, as well as deceptive advertising practices akin to "JC Penney type specials" displayed on your website. These incidents confirm the lack of integrity within Mid-America Apartment Communities, Inc. (MAA). Therefore, I am compelled to continue my efforts to expose the truth and insist on comprehensive investigations into all facets of your operations.

Additionally, the actions of Michael Kapallas, with his career shifts from public to private sectors and back, coupled with his social media interactions with attorneys he currently collaborates with, clearly indicate conflicts of interest. His recent request for additional time due to holiday and travel plans, amidst these critical issues, is unacceptable and appears to be a deliberate delay tactic.

The involvement of the Western Tennessee civil court system raises further concerns. According to the Tennessee Code of Judicial Conduct, judges and court officials are required to avoid impropriety and the appearance of impropriety, and they must act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The presence of potential conflicts of interest or any signs of judicial bias not only undermines the justice system but also contravenes the principles outlined in these regulations.

Moreover, federal law under 28 U.S.C. § 455 explicitly states that any justice, judge, or magistrate judge of the United States must disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. This includes situations where they have a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

Given these standards, I will continue to report my observations and concerns, emphasizing the significant conflicts of interest and governance failures within MAA. These issues transcend mere regulatory compliance and strike at the core of the ethics and transparency that should guide every publicly traded company. My actions are not just warranted but necessary to ensure that these principles are not merely theoretical but are actively practiced within your organization. 7/4/24, 12:39 Plase 2:23-cv-02186-SHL-cgc

### Created

Tue, 07/02/2024 - 15:18

Additionally, my engagement with the whistleblower hotline of Mid-America Apartment Communities, Inc. (MAA), a public company, to report substantial and ongoing fraudulent activities from 2016 to the present day is not only a legally protected activity but also a critical function of effective corporate governance. The allegations I have raised are grave and multifaceted, including serious antitrust issues such as colluding with other companies to fix rent prices using RealPage software, and deceptive sales practices evident from your public-facing website and other communications. These allegations, if substantiated, suggest systemic misconduct that could significantly impact consumers and the market at large.

The need for a thorough and unbiased investigation into these matters is underscored by disclosures in your own SEC filings and corporate charter, which indicate that certain critical compliance procedures are known exclusively to upper management. This concentration of knowledge and the apparent lack of transparency could potentially facilitate the misconduct I am reporting. It also raises serious concerns about the impartiality and thoroughness of internal investigations into these issues, particularly the investigation promised in 2021, which has yet to be properly addressed or disclosed.

Under the Sarbanes-Oxley Act of 2002, Section 301, public companies are required to establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal accounting controls, or auditing matters, and to allow for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters. This legal provision directly supports my use of the whistleblower hotline to report the observed issues.

The allegations that MAA is colluding with other companies to fix rent prices using RealPage software are well-known among employees at all levels and are particularly egregious. Such practices, if true, constitute a clear violation of the Sherman Antitrust Act, which prohibits activities that restrict competition and lead to price fixing. The use of RealPage software in this context suggests a systematic approach to manipulating market prices, which is not only unethical but also illegal.

This situation demands rigorous regulatory scrutiny and an unbiased internal review. Under the whistleblower system, such reports should be facilitated and handled with the utmost seriousness to ensure compliance with antitrust laws and to maintain fair market practices. It is critical that these concerns are addressed transparently and without interference from internal management to uphold the integrity of the market and protect consumer interests.

Moreover, the Federal Trade Commission Act, which prohibits deceptive or unfair business practices, aligns with the deceptive sales practices I have reported. Under this act, a company's public representations, which can be misleading, warrant regulatory and internal review for compliance with federal law.

Your stated investigation techniques, as described in your own SEC filings, suggest that investigations are conducted by management. This approach is concerning as it can lead to conflicts of interest, particularly if those under investigation are in positions of control.

7/4/24, 12:39 PICase 2:23-cv-02186-SHL-cgc Data Marine Determined and the state of 27

This potentially flawed and biased approach undermines the effectiveness and integrity of the investigative process, highlighting the necessity for external oversight.

In light of these legal frameworks, it is clear that my reports via the whistleblower hotline are not only appropriate but essential. The allegations I have raised are serious and should be treated as such, not dismissed or unduly restricted by potentially misapplied court orders or internal policies.

#### Created

Tue, 07/02/2024 - 15:02

Your recent communication appears to improperly restrict my lawful use of the whistleblower system, under the guise of adhering to a court order. This misinterpretation not only undermines my rights but also constitutes a misapplication of the order that could be viewed as an abuse of power warranting further investigation.

It is crucial to emphasize that the court order dated May 6, 2024, explicitly preserves my rights under Paragraph 12 to make whistleblower complaints to government agencies. Your portrayal of my actions as abusive directly conflicts with the protective intent of federal whistleblower laws such as the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. These statutes are designed to facilitate the exposure of illegal or unethical practices by protecting those who report such activities.

Furthermore, the order must be considered within the framework of the landmark U.S. Supreme Court case, Garcetti v. Ceballos (2006), which underscores the need for protecting public employees who speak out on matters of public concern, extending relevant principles to all individuals engaged in whistleblowing activities under specific circumstances. My communications fall squarely within these protected bounds.

The investigations into my submissions and your assertion that they did not reveal any wrongdoing do not diminish my rights to report suspected violations. The lack of transparency and the absence of detailed reports on these investigations are troubling, particularly as they contravene the principles set forth in Burlington Northern & amp; Santa Fe Railway Co. v. White (2006), where the Supreme Court elaborated on the broad protections afforded to whistleblowers against retaliation.

Moreover, the manner in which the court order was obtained raises significant legal concerns. If the evidence used to secure the order was improperly acquired, this not only challenges the legitimacy of the order itself but may also constitute a violation of procedural justice as outlined in the Federal Rules of Civil Procedure. The potential misuse of the court order to obstruct lawful whistleblower activities could itself be viewed as an abuse of judicial processes, necessitating thorough scrutiny.

I must also reference Riley v. St. Luke's Episcopal Hospital (2005), where the Fifth Circuit emphasized the need for clear evidence when curtailing rights under whistleblower statutes. The lack of substantive evidence supporting the prohibition against my use of the whistleblower system suggests that the application of the court order in this manner may not withstand legal scrutiny. 7/4/24, 12:39 PMCase 2:23-cv-02186-SHL-cgc Douglation December 1 10 Bis 10 blower December 1 10 Bis 10 Bis

Given these considerations, it is imperative that MAA reevaluate its stance and ensure that its actions are in strict compliance with both the letter and the spirit of whistleblower protection laws. The misuse of legal frameworks to silence whistleblowing not only violates federal law but also fundamentally undermines corporate governance and accountability.

I will continue to pursue clarification and rectification of these issues, as the implications of an improperly obtained order extend far beyond my individual case to the broader legal standards governing corporate and judicial conduct.

FromCreatedMid-America Apartment Communities, Inc. RepresentativeTue, 07/02/2024 - 13:09

Mr. Philipson,

Your continued abuse of our whistleblower platform is a violation of the Order issued against you by the United States District Court for the Western District of Tennessee on May 6, 2024. I refer you to Paragraphs 8, 9, and 11 of the Order which prohibit you from contacting any MAA Person, as such term is defined in the Order, without their written consent, among other things. Paragraph 12 of the Order permits you to make whistleblowing complaints or otherwise communicate with a government agency about your concerns. We encourage you to do so.

We have reviewed each submission, investigated as necessary, and concluded that none of them indicate any questionable accounting, internal accounting controls or auditing matters have occurred. Accordingly, we have not taken any corrective actions, and we have closed your submissions. We will provide the Audit Committee with all of your submissions on this thread and discuss with them our process and results.

In terms of your submissions from 2021, as we advised you at the time, we concluded that none of them indicated any questionable accounting, internal accounting controls or auditing matters and no corrective actions were taken prior to the closing of the submission. This conclusion was also shared with the Audit Committee.

Please cease all communications with MAA Persons, whether through our whistleblower portal or otherwise, including through bcc emails to various MAA Persons.

#### Created

Tue, 07/02/2024 - 12:40

It's also enlightening to witness the depth of information that can be accessed through legitimate avenues, such as "court-ordered" subpoenas. These legal tools are crucial in shedding light on the motives and communications of Mid-America Apartment Communities, Inc. (MAA) and their employees. Regarding Mr. Grimes and Mr. Campbell, whose departures were described as "planned retirements," it's noteworthy how similar corporate transitions can attract public interest and scrutiny, reminiscent of the reaction to Elon Musk's influential tweets, which brought significant regulatory oversight.

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Furthermore, mentioning record profits at MAA underscores the need for ongoing transparency and compliance with ethical and legal standards. Organizations like Accountable.us and ProPublica continue to urge more thorough investigations into corporate practices to ensure that these profits align with legal requirements. This scenario emphasizes the importance of vigilant oversight in today's regulatory environment, which is keenly focused on ensuring that economic prosperity within corporations does not come at the expense of legality and fairness. DC will come knocking in time. MAA has updated its SEC filings this year to state that it will cover the legal expenses for lawsuits involving its employees and agents. However, it is crucial to note that such provisions do not extend to fraud cases. Under the U.S. Code, specifically 18 U.S.C. § 1341, which deals with mail and wire fraud, any fraudulent actions undertaken by employees or agents that result in legal proceedings are exempt from corporate indemnification. This legal statute stipulates that indemnity does not apply where there has been a violation of the law through deceptive practices. Hence, MAA's commitment to fund legal defenses would not encompass cases where fraud is alleged.

Have a good day. I will make sure to keep providing information.

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Tue, 07/02/2024 - 12:18

Furthermore, in regards to Mr. Russell, Mr. Delpriore, and Ms. Carpenter, I must explicitly state that I harbor no ill will or blame towards them individually for their involvement. It is my considered view that these individuals, possibly due to limitations in their understanding or insights into the full scope of legal and ethical standards, may not fully comprehend the gravity and moral dimensions of the actions taken under the corporate directive of MAA. Upon reviewing some of their educational records, it is evident that they did not excel academically, which may have contributed to a limited grasp of the complex legal and ethical issues at hand. However, it should be noted that they have been of a great deal of help by providing information that has been crucial to clarifying the broader context of the case. Their actions, while seemingly complicit, may not stem from a mal-intentioned place but rather from a lack of comprehensive understanding of what is right versus wrong in such complex legal and ethical arenas. Therefore, I believe they are not fully culpable on a personal level for the roles they have seemingly played.

#### Created

Tue, 07/02/2024 - 10:23

To: Leslie Wolfgang, Eric Bolton, Tim Argo, and Others in Management Mid-America Apartment Communities, Inc., along with all associated subsidiaries and entities, whether utilized consistently or intermittently over the years.

Dear Ms. Wolfgang, Mr. Bolton, Mr. Argo, and Involved Management,

Regardless of the affidavits and declarations you choose to file, this will not alter the historical record of longstanding fraud committed over the years. You may persist in utilizing these declarations, affidavits, and continued court processes to intimidate and harass me, but such actions will not detract from the substantiated facts of the case nor

#### 7/4/24, 12:39 Phi ase 2:23-cv-02186-SHL-cgc Dans Maria Maria Maria Maria Maria Page 24 of 27

the legal accountability you face. Furthermore, your attempts to suppress my freedom of speech and violate my privacy rights through your counsel's repeated misuse of legal tools are unacceptable. The issuance of phony subpoenas without proper court sanctioning, targeted at my personal cell phones, alleged bank accounts, credit cards, email accounts, and even my internet service provider, constitute a series of calculated attacks. These actions not only infringe on my lawful rights but also demonstrate a clear pattern of behavior designed to harass and silence me under the guise of legal proceedings.

Moreover, such practices amount to whistleblower retaliation, which is explicitly prohibited under the Dodd-Frank Wall Street Reform and Consumer Protection Act, specifically under Section 922, providing protection against retaliation for whistleblowers who report violations of securities laws. Additionally, the abuse of legal processes to further fraudulent aims is potentially actionable under the Racketeer Influenced and Corrupt Organizations Act (RICO), which addresses patterns of illegal activity that include using the courts to perpetuate fraud.

For instance, if a corporation systematically engages in fraudulent practices such as securities fraud, mail and wire fraud, and these actions are not isolated incidents but part of an ongoing strategy to enhance the corporation's profits at the expense of others (e.g., investors, regulators, or the public), this could potentially meet the criteria for a RICO case. Suppose top executives or managers are directing these activities or are aware of them and condone their commission. In that case, this ties the racketeering activity directly to the corporation's conduct of its business. These statutes affirm that your current legal strategies may be ethically reprehensible and illegal, exposing Mid-America Apartment Communities, Inc. to significant legal consequences.

Have a great day!

**Dennis Philipson** 

#### Documents

PXL_20240702_140017056.jpg (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-02/PXL_20240702_140017056.jpg?language=en)	2.92 MB
PXL_20240702_140023781.jpg (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-02/PXL_20240702_140023781.jpg?language=en)	3.52 MB
PXL_20240702_140020146.jpg (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-02/PXL_20240702_140020146.jpg?language=en)	2.64 MB
Exhibit A.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-02/Exhibit%20A.pdf?language=en)	1.71 MB

#### Created

Tue, 07/02/2024 - 10:16

To: Leslie Wolfgang, Eric Bolton, Tim Argo, and Others in Management Mid-America Apartment Communities, Inc., along with all associated subsidiaries and entities, whether utilized consistently or intermittently over the years.

Dear Ms. Wolfgang, Mr. Bolton, Mr. Argo, and Involved Management,

#### 

As an established whistleblower under federal protection, I am compelled to address the ongoing and systematic misuse of the legal and postal systems by your appointed legal representatives, actions which are evidently endorsed by Mid-America Apartment Communities, Inc. This includes the continuous deployment of deceptive legal communications and documents from Tennessee to Virginia, representing a deliberate and orchestrated scheme to defraud and harass, in clear violation of 18 U.S.C. § 1341, which addresses the misuse of mail for fraudulent purposes.

Legal Basis and Violations:

Scheme to Defraud: As per the directives under 18 U.S.C. § 1341, it is clear that the use of the postal service in your legal strategy involves a pattern of harassment and deceit, aimed to manipulate legal proceedings and unjustly gather information under false pretenses. This misuse of the postal service to execute such schemes directly violates federal mail fraud statutes and undermines the integrity of the judicial process.

Intent to Defraud: The deliberate actions of your attorneys, ostensibly under directives from senior management, extend beyond mere procedural oversights and constitute a concerted effort to inflict harm and disadvantage upon my person and reputation. Such intentions clearly align with the elements of fraud as outlined in the Restatement (Second) of Torts, which necessitates showing that the false representations were made with the knowledge of their falsity and the intent to deceive.

Material Misrepresentation or Omission: The correspondence orchestrated by your counsel involves egregious misrepresentations and strategic omissions. Such conduct likely violates the ethical standards set forth in the American Bar Association Model Rules of Professional Conduct, particularly Rule 4.1 regarding Truthfulness in Statements to Others, which states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law.

Use of the Mail: The interstate mailings from Tennessee to Virginia satisfy the jurisdictional requirements necessary to categorize these actions under federal mail fraud statutes, specifically implicating the elements that require the use of interstate mail carriers to execute or attempt to execute a scheme to defraud.

Misuse of the Legal System: Beyond mail fraud, the actions taken by your legal team may constitute an abuse of process, which is actionable under both state and federal civil trial rules. The utilization of legal mechanisms for purposes ulterior to those for which they are designed, particularly to harass or unduly coerce an individual, can form the basis of such a claim.

Liability Under Civil Trial Law:

Under theories of Principal-Agent Liability, Conspiracy to Commit Fraud, and Aiding and Abetting, Mid-America Apartment Communities, Inc. may face substantive liability. As per Restatement (Third) of Agency, an employer or principal may be held liable for the actions of their agents if such actions were performed within the scope of employment and were intended, at least in part, to benefit the principal.

7/4/24, 12:39 Plase 2:23-cv-02186-SHL-cgc Data Marker 1 1 Mais 1 Blow Plase Marker Page 26 of 27

Given the gravity of these allegations and the compelling evidence at my disposal, this letter serves to document these serious concerns and to inform you of the legal implications and potential consequences. The systematic actions taken by your agents, under the guise of legal proceedings, expose your company to significant legal and civil penalties.

Sincerely, Dennis Philipson (Pro Se)

1 (?language=en&ajax\_form=1&\_wrapper\_format=drupal\_ajax&page=0)

2 (?language=en&ajax\_form=1&\_wrapper\_format=drupal\_ajax&page=1)

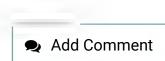
3 (?language=en&ajax\_form=1&\_wrapper\_format=drupal\_ajax&page=2)

Next > (?language=en&ajax\_form=1&\_wrapper\_format=drupal\_ajax&page=1)

Last » (?language=en&ajax\_form=1&\_wrapper\_format=drupal\_ajax&page=2)

# Add Comment

Message



**Documents** 

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Document 114 Filed PageID 2190

Filed 07/09/24 Page 1 of 5

(1 of 5)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT 100 EAST FIFTH STREET, ROOM 540 POTTER STEWART U.S. COURTHOUSE CINCINNATI, OHIO 45202-3911

Tel. (513) 564-7000 www.ca6.uscourts.gov

Filed: July 09, 2024

Mr. Dennis Philipson P.O. Box 30142 Alexandria, VA 22310

Kelly L. Stephene

Clerk

Re: Case No. 24-5614, Mid-America Apartment Communities, Inc. v. Dennis Philipson Originating Case No. 2:23-ev-02186

Dear Mr. Philipson,

This appeal has been docketed as case number 24-5614 with the caption that is enclosed on a separate page. Please review the caption for accuracy and notify the Clerk's office if any corrections should be made. The appellate case number and caption must appear on all filings submitted to the Court.

As the appellant, when you submit motions, briefs or any other documents to the Clerk's office, send only 1 original, which you have signed. Copies are no longer necessary. Do not staple, paper clip, tab or bind pro se motions or briefs sent to the Clerk's office -- these documents are scanned and staples etc. create paper jams. You must mail opposing counsel a copy of every document you send to the Clerk's office for filing.

Opposing counsel will docket pleadings as an ECF filer. Check the ECF page on the court's web site <u>www.ca6 uscourts.gov</u> for additional information about ECF filing if you are not familiar with it. The following case opening items are due by July 23, 2024. The Disclosure of Corporate Affiliations is now an automated entry. Filers may still use the form 6CA-1 located on the Court's website if the automated entry does not provide sufficient space.

Appellee:	Appearance of Counsel
	Disclosure of Corporate Affiliation
	Application for Admission to 6th Circuit Bar (if applicable)

Enclosed is a transcript order form should you require transcript of a hearing(s) to support your arguments on appeal. If you do order transcript, the form must be filed by **July 23**, **2024**. A copy of the form must also be provided to the court reporter along with your payment for the transcript. Please see page 2 of the transcript order for additional information. If transcript is not ordered by this deadline, a briefing schedule will issue. Case 2:23-cv-02186-SHL-cgc Document 114 Cas 2. A PagelD 2191

You have until August 8, 2024 to either pay the \$605.00 appellate filing fee or file a motion for leave to proceed on appeal in forma pauperis and an accompanying financial affidavit. Either one must be paid/filed with the U.S. District Court. Failure to do one or the other may result in the dismissal of the appeal without further notice. If you move for pauper status and the district court denies your motion in part or in full, or if you are otherwise dissatisfied with the district court's ruling, you may renew the motion for pauper status in this court within 30 days of that ruling.

The Clerk's office cannot give you legal advice but if you have questions, please contact the office for assistance.

Sincerely yours,

s/Virginia Lee Padgett Case Manager Direct Dial No. 513-564-7032

cc: Mr. John S. Golwen

Enclosure

Document 114 PageID 2192

### **OFFICIAL COURT OF APPEALS CAPTION FOR 24-5614**

MID-AMERICA APARTMENT COMMUNITIES, INC.

Plaintiff - Appellee

v.

DENNIS PHILIPSON

Defendant - Appellant

Document 114 PageID 2193

Filed 07/09/24 Page 4 of 5

#### UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

#### **Transcript Order for Pro Se Parties**

Only parties not represented by counsel may use this form. Attorneys must file transcript orders electronically in CM/ECF. Include on this form all transcripts that you are ordering from one court reporter. Use a separate form for each court reporter

SHORT CASE TITLE	NAME OF DISTRICT COURT	DISTRICT COURT CASE NUMBER
COURT OF APPEALS CASE NUMBER	DATE NOTICE OF APPEAL FILED BY CLERK OF DISTRICT COURT	
	COURT REPORTER	NAME OF ORDERING PARTY

	Check the applicable provision: I am ordering a transcript (See Section B) I am not ordering a transcript	B. Provide a description, including dates, of the proceedings for which a transcript is required (i.e. oral argument, sentencing, etc.)
İ	Reason for not ordering a transcript: Transcript is already on file in district court	
	Transcript is unnecessary for appeal purposes	
	No Hearings	Method of Payment 🗇 Private Funds 🔅 Other
C.	When transcript is funded by the Criminal Justice Act, transcript of the following proceedings will be provided only if specially authorized by the district court	D. Deliver transcript to: (Appellant's name, address, telephone)
	Von Due	
	Jury Instructions	
	Opening statement of plainuff	
	Closing argument of plaintiff	
	Opening statement of defendant	
0	Closing argument of defendant	

Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for dismissal of appeal

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of transcript. See		
FRAP 10(b). I understand that unless I have already ordered the transcript, I shall order its preparation at the time		
required by FRAF and the Local Rules.		
ORDERING PARTY'S SIGNATURE	DATE	

ALLOWANCE BY THE COURT OF LEAVE TO PROCEED IN FORMA PAUPERIS IN A CIVIL APPEAL DOES NOT ENTITLE THE LITIGANT TO HAVE TRANSCRIPT AT GOVERNMENT EXPENSE.

#### THIS ORDER FORM MUST BE SENT TO BOTH THE COURT REPORTER AND THE COURT OF APPEALS.

(4 of 5)

Case Manager

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#### UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

#### INSTRUCTIONS FOR PRO SE PARTIES ORDERING TRANSCRIPT

1. Many appeals do not require a transcript. If you are not represented by an attorney and are ordering transcript related to your appeal, you must complete this form and mail it to the Clerk's Office at this address:

> United States Court of Appeal 540 Potter Stewart U.S. Courthouse 100 East Fifth Street Cincinnati, Ohio 45202

- 2. You must also provide a copy of this form to the court reporter along with your payment for the transcript.
- 3. Complete a separate form for each court reporter from whom you are ordering transcript. Do not include more than one court reporter on an order form.
- 4. If you have filed a proper transcript order form, the court of appeals clerk will forward the transcript order to the court reporter for processing. However, you must contact each court reporter from whom you are ordering transcript, provide a copy of this order, and pay for the transcript.
- 5. The court reporter will charge you the necessary fees for transcript. The court reporter may require you to pay all fees before beginning work on the transcript.
  - NOTE: Being granted pauper status by the district court or leave to appeal in forma pauperis does not automatically entitle you to a free transcript.
  - If you believe that you are entitled to transcript without paying the fee, you must file a motion for transcript at government expense, demonstrating that you are indigent and that the appeal is not frivolous but presents a substantial question.
- 6. Failure to arrange for payment of transcript, to properly order transcript, or to meet other court deadlines can result in the dismissal of your appeal.

	PageID 2195	(1 of 3)
UNITED STAT	No. 24-5614 TES COURT OF APPEALS IE SIXTH CIRCUIT	<b>FILED</b> Jul 10, 2024 KELLY L. STEPHENS, Clerk
MID-AMERICA APARTMENT COMMU	JNITIES, )	
INC.	)	. i
Plaintiff-Appellee,	)	<u>O R D E R</u>
v.	) )	
DENNIS PHILIPSON	)	
Defendant-Appellant.	)	<b>x</b>

Filed 07/10/24

Page 1 of 3

Case 2:23-cv-02186-SHL-coc Document 115

This matter is before the court upon initial review of the notice of appeal. The district court entered its judgment on May 6, 2024. The notice of appeal filed on July 3, 2024, is late.<sup>1</sup> See 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a), 26(a).

The record indicates that Dennis Philipson has not moved in the district court for an extension of time to appeal under Federal Rule of Appellate Procedure 4(a)(5), or for reopening of the time to appeal under Federal Rule of Appellate Procedure 4(a)(6). Unless such a motion is filed in and granted by the district court, this court will be required to dismiss the appeal.

It is therefore ordered that Philipson show cause in writing not later than 21 days from the date of this order why the appeal should not be dismissed for failure to comply with 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a).

<sup>&</sup>lt;sup>1</sup> The notice of appeal also fails to contain the handwritten signature of the appellant. *See* Fed. R. Civ. P. 11(a). This court sent the appellant a letter dated July 9, 2024, with instructions as to how to correct that error.

Document 115 PageID 2196

(2 of 3)

No. 24-5614 - 2 -

It is further ordered that the briefing schedule be held in abeyance.

ENTERED PURSUANT TO RULE 45(a), RULES OF THE SIXTH CIRCUIT

Stephens

erhens, Clerk

Document 115 PageID 2197

#### United States Court of Appeals for the Sixth Circuit

#### U.S. Mail Notice of Docket Activity

The following transaction was filed on 07/10/2024.

**Case Name:** Mid-America Apartment Communities, Inc. v. Dennis Philipson **Case Number:** 24-5614

#### Docket Text:

SHOW CAUSE order filed to have Appellant Mr. Dennis Philipson show cause for possible jurisdictional defect involving the filing of a late notice of appeal. Response due by 07/31/2024 for Dennis Philipson.

The following documents(s) are associated with this transaction: Document Description: Order

Notice will be sent to:

Mr. Dennis Philipson P.O. Box 30142 Alexandria, VA 22310

#### A copy of this notice will be issued to:

Mr. John S. Golwen Ms. Wendy R. Oliver

Document 116

PageID 2198

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

#### Plaintiff. MID-AMERICA APARTMENT COMMUNITIES, INC (MAAI & MAA-PI)., **MID-AMERICA APARTMENT** PAH Lender, LLC COMNUNITIES, LLC., MID-AMERICA APARTMENTS L.P PBP Apartments, LLC (MAA) PF Apartments, LLC PL Conservation, LLC Alabama CPSI, LLC Post Alexander II, LLC CPSI-UCO Spanish Oaks, LLC CPSI-UCO, LLC Post Carlyle I, LLC Highway 31 Alabaster Two, LLC Highway 31 Alabaster, LLC Post Corners, LLC Delaware Post Galleria, LLC 10th Apartments, LLC Post Hyde Park, LLC 1499 Massachusetts Avenue, Inc. 1499 Massachusetts Holding, LLC CC Daybreak, LLC CC Val Vista, LLC Post Park, LLC CC West Midtown, LLC Colonial Commercial Contracting, LLC Colonial Construction Services, LLC Heathrow 4, LLC Post Services, LLC Post South End GP, LLC MAA Alloy, LLC MAA Arkansas REIT, LLC Post South End, L.P. MAA Holdings, LLC MAA WWARRS, LLC Post Carlyle II, LLC Sand Lake 2019, LLC Tennessee Stone Ranch at Westover Hills, LLC

Florida MAA Westshore Exchange LLC <u>Georgia</u>

3630 South Tower Residential, LLC 98 San Jac Holdings, LLC Park Land Development, LLC Post 1499 Massachusetts, LLC Post Asset Management, Inc. Post Centennial Park, LLC Post Midtown Atlanta, LLC Post Midtown Square GP, LLC Post Midtown Square, L.P. Post Park Development, LLC Post Parkside at Wade II GP, LLC Post Parkside at Wade II, L.P. Post Wade Tract M-2, L.P. Rise Condominium Development, LLC

Brighter View Insurance Company, LLC Mid-America Apartments, L.P.

#### Texas

Akard-McKinney Investment Company, LLC MAA of Copper Ridge, Inc.

Case 2:23-cv-02186-SHL-cgc	Document 116 PageID 2199	Filed 07/12/24	Page 2 of 3
v. DENNIS MICHAEL PHILIPSON, Defendant.	) ) ) ) )	No. 2:23-cv-218	6-SHL-cc

#### Amended Notice of Appeal to the United States Court of Appeals for the Sixth Circuit

To the Clerk of the Court and all parties concerned:

Notice is hereby given that Dennis Michael Philipson, the Defendant in the above-captioned case, intends to appeal to the United States Court of Appeals for the Sixth Circuit from the final judgment entered in this action by the United States District Court for the Western District of Tennessee on May 6, 2024, and all interlocutory orders leading to the judgment. This notice is to inform the Court of the Defendant's intention to challenge the decision based on claims of judicial error, procedural irregularities, and violations of constitutional rights that critically affected the fairness and integrity of the trial proceedings.

The grounds for the forthcoming appeal include, but are not limited to:

- 1. **Judicial Misconduct and Bias**: The trial was marred by evident judicial misconduct and bias, where the presiding judge exhibited clear partiality towards the Plaintiff, disregarding standard judicial procedures and the fundamental principles of fairness. The involvement of the judicial law clerk, who previously worked with Plaintiff's law firm, raised unresolved conflicts of interest.
- 2. **Procedural Irregularities and Abuse of Process**: The court engaged in procedural irregularities, including the mishandling of evidence and misuse of subpoenas, which undermined the integrity of the judicial process. Key decisions were made without sufficient evidence, and the sanctions imposed were disproportionately severe and not supported by the facts of the case.
- 3. **Violation of Constitutional Rights**: The Defendant's constitutional rights, including the right to a fair trial and due process, were compromised. The court's failure to allow adequate time for preparation and response to the Plaintiff's motions denied the Defendant the opportunity to effectively participate in his defense.
- 4. **Erroneous Legal Rulings**: The court made several erroneous legal rulings, particularly concerning the application of the law regarding sanctions, permanent injunctions, and the interpretation of actions as constituting trademark infringement and cyber harassment.

The Defendant will proceed with filing the formal Notice of Appeal in accordance with the rules and timeline stipulated by the Federal Rules of Appellate Procedure.

Document 116 PageID 2200 Filed 07/12/24 Page 3 of 3

#### Dated this 12th day of July, 2024.

Respectfully submitted, /s/ Dennis Michael Philipson

1th C

Dennis Michael Philipson Defendant, Pro Se PO Box 30142 Alexandria, VA 22310

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of July 2024, a true and correct copy of the foregoing Notice of Intent to Appeal was served via PACER and United States Postal Service upon the following: *Counsel for Plaintiff:* Bass, Berry & Sims PLC

/s/ Paige Waldrop Mills Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC Suite 2800; 1 50 3rd Ave. South Nashville, Tennessee 37201 Tel: 615-742-6200

/s/ John Golwen\_\_\_\_\_ John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 **Counsel for Mid-America Apartment Communities, LLC** 

- 6

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant, Pro Se

#### Document 117 Filed 07/16/24 Page 1 of 2 PageID 2201

COURTS/USDC-TN-W 167 N MAIN ST STE 242 MEMPHIS, TN 30103 501 495 1200

#### SALE

	REF# 00000001
Batch # 199001	RRN: 470100001
07/16/24	11:38:52
	CVC: N
APPR CODE. 01081P	
MASTERCARD	Manual CNP
400	***

#### AMOUNT

## \$605.00

**APPROVED** 

X,

I AGREE TO PAY ABOVE TOTAL AMOUNT IN ACCOMPANCE WITH CARD (SOURCE'S MORRENT (NENCHART ACREEMENT OF CREDIT VOICULL) RETAIN THUS COPY FOR CTATINUM VIRLEDGATION

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PageID 2202

Document 117 Filed 07/16/24 Page 2 of 2

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Page 1/1



## **U.S. District Court**

#### **Tennessee Western - Memphis**

Dennis M. Philipson

Receipt Date: Jul 16, 2024 2:41PM

Ropt, N	o: 200004475	Trans. Date: Jul 16: 2024 2:41PM		Ca	shler ID #MK
CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
2038	Notice of Appeal/Docketing-PLRA- Fee-PIF		1	605.00	605.00

CD	Tender		Amt
CC	Credit Card		\$605.00
		Total Due Prior to Payment:	\$605.00
		Total Tendered.	\$605.00
		Total Cash Received	\$0.00
		Cash Change Amount	\$0.00

Comments: 23-2186, Mid-America Apartment Communities, Inc. v. Dennis Philipson (Appeal Case No. 24-5614)

Questions/Comments: Please contact USDC-TN Western (Memphis) at 901.495.1200.

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT, COMMUNITIES, INC. Plaintiff, v. DENNIS PHILIPSON, Defendant.

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

# PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT

Plaintiff Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff"), by and through counsel, submits this Response to Defendant Dennis Philipson's ("Philipson") Motion for Entry to Judgment. Philipson brings this Motion under Federal Rules of Civil Procedure 11, 16, 37, and 56. This Motion is not properly before the Court nor does it merit a response for the following reasons.

Philipson seeks sanctions under Rule 11 because "MAA's continuous filings, which press unsubstantiated claims and demand undue discovery of communications made to government bodies, must be scrutinized for potential sanctions to deter further abuse of the judicial process." (Dkt. 106 at 8). Pursuant to Federal Rule of Civil Procedure 11(c)(2), "[a] motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn

#### Case 2:23-cv-02186-SHL-cgc Document 118 Filed 07/22/24 Page 2 of 4 PageID 2204

or appropriately corrected within 21 days after service or within another time the court sets." Fed. R. Civ. P. 11(c)(2). Philipson did not serve a Rule 11 Motion on MAA or its counsel. Therefore, any Rule 11 Motion Philipson is attempting to pursue is not properly before this Court.

Philipson cites Rule 16 as part of his Motion, requesting that "this court not further schedule or manage proceedings." (Dkt. 106, at 9). This Court entered a Scheduling Order on September 11, 2023, and all of the deadlines on that schedule have since passed. (*See* Dkt. 47). Neither party has filed a motion to amend the schedule. Any motion under Rule 16 is inappropriate.

Philipson's motion also requests sanctions under Rule 37. Rule 37 allows sanctions for: failure to obey a discovery order; not producing a person for examination; failure to disclose, supplement an earlier response, or to admit; party's failure to attend its own deposition, serve answers to interrogatories, or respond to a request for inspection; failure to preserve electronically stored information; or failure to participate in framing a discovery plan. *See* Fed. R. Civ. P. 37. Philipson has not alleged any of these reasons. Instead, Philipson contends "MAA's attempts to unlawfully access information disclosed to governmental agencies and professional boards are clear violations of discovery processes." (Dkt. 106, at 9). There is currently no pending discovery, and the deadline for completing all discovery was January 11, 2024. (*See* Dkt. 47 at 2). Additionally, in his motion, Philipson continues to allege improper conduct regarding MAA's subpoenas (*See, e.g.*, Dkt. 106 at 7, 8, 13, 16, 17, 20), further violating this Court's Injunction (Dkt. 97 at 10).

Finally, Philipson cites Rule 56 in his motion, requesting "an immediate summary judgment to end the ongoing legal and personal harassment and to allow for the pursuit of justice in a higher, impartial court." (Dkt. 106 at 9). Pursuant to Local Rule 56.1 of the United States District Court for the Western District of Tennessee, motions for summary judgment "shall be

#### Case 2:23-cv-02186-SHL-cgc Document 118 Filed 07/22/24 Page 3 of 4 PageID 2205

accompanied by a separate, concise statement of the material facts as to which the moving party contends there is no genuine issue for trial." LR 56.1. Philipson did not provide a Statement of Undisputed Material Facts with his motion, and, therefore, his motion for summary judgment is improperly before this Court.

#### **CONCLUSION**

Philipson specifically requests "that this court issue an immediate judgment against [him]." (Dkt. 106 at 96). The relief he seeks is in accordance with MAA's Motion for Contempt for Violating Permanent Injunction (Dkt. 113), Notice of Filing of Corrected Statement of Damages (Dkt.101), and Supplemental Declaration of Paige Mills (Dkt. 111), all of which are currently pending before this Court. MAA respectfully requests that this Court grant the relief previously requested by MAA.

Respectfully Submitted,

/s/ Paige Waldrop Mills

Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC 150 3<sup>rd</sup> Ave. South, Suite 2800 Nashville, Tennessee 37201 Tel: (615) 742-6200 pmills@bassberry.com

John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com jordan.thomas@bassberry.com

#### Counsel for Mid-America Apartment Communities, LLC

Document 118 Filed 07/22/24 Page 4 of 4 PageID 2206

#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2024 the forgoing was served on the individual below by the ECF filing system, email, and regular mail:

Dennis Philipson 6178 Castletown Way PO Box 30142 Alexandria, Virginia 22310 Phillydee100@gmail.com Dphilipson1982@yahoo.com

> <u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

#### IN THE UNITED STATES DISTRICT COURT

#### FOR THE WESTERN DISTRICT OF TENNESSEE

#### AT MEMPHIS

MID-AMERICA APARTMENT ,		)	
COMMUNITIES, INC		)	
	Plaintiff,	)	
		)	
v.		)	Docket No. 2:23-cv-02186-SHL-cgc
		)	JURY DEMAND
DENNIS PHILIPSON		)	
		)	

Defendant.

#### NOTICE TO THE COURT

In accordance with Federal Rule of Civil Procedure 5(b)(2)(C) and Local Rule 5.2 of the Western District of Tennessee, this notice serves to reiterate my previously stated preferences for communication in the ongoing litigation of Philipson v. Mid-America Apartment Communities Inc.

Despite directives previously issued and recorded under docket entry 107 on June 24th, by JAE, which requested cessation of electronic mail communications from opposing counsel and specified postal mail as the medium for all legal correspondence, non-compliance continues. I am still receiving emails from attorneys at Bass, Berry & Sims PLC, which fails to respect the stipulated communication channels.

To clarify and reaffirm my communication preferences:

- I request that all pertnent documents from the Western District of Tennessee US District Court, including orders, receipts, and other communications, be sent to the following postal address and updated in the docket accordingly. PO Box 30142 Alexandria, VA 22310
- I require that the opposing counsel or their agents communicate with me solely through U.S. mail to preserve my privacy, IP address, and other personal information, to ensure improperly issued subpoenas against my personal information.

**See Exhibit A**: Correspondence dated July 22, 2024, wherein I reiterated these communication preferences to counsel. Additionally, reference is made to the notation on the docket dated June 24th, which documents these preferences.

#### Referencing the June 24th Notice:

Monday, June 24, 2024

Docket Entry 107

#### Notice of Change of Address

NOTICE of Change of Address by Dennis Philipson. This document officially revokes any prior consent for electronic communications as outlined by Federal Rule of Civil Procedure 5(b)(2)(C) and Local Rule 5.2 of the Western District of Tennessee. It demands that all documents and communications relevant to Case No. 2:23-cv-02186-SHL-cgc be handled via traditional postal methods immediately. Additionally, consistent with Federal Rule of Civil Procedure 5 2(a), it requires the removal of my email address from the Public Access to Court Electronic Records (PACER) to prevent unauthorized access to my personal data

I will reiterate from what I have requested throughout this docket concerning the management of communications and personal data security.

#### Additional Notice on Appeals and Current Proceedings:

I hereby inform the court that an appeal concerning this case has been initiated and is presently under consideration by the Sixth Circuit Federal Appellate Court. Considering this appellate action, the continued filing of motions by the opposing counsel in this court raises procedural concerns. Specifically, pursuant to Federal Rule of Appellate Procedure 12.1, which addresses the transmission of records on appeal, and Local Appellate Rule 12.1, any ongoing lower court proceedings should be examined for their appropriateness during the appeal.

Furthermore, I have previously requested the issuance of a final judgment or a detailed billing of claims by the opposing counsel, sent via postal mail, to facilitate the resolution of this matter at the district court level. This request aligns with Federal Rule of Civil Procedure 58, which stipulates the entry of judgment in a separate document, and Rule 77(d)(1), concerning the need for serving notice of the entry of judgment.

This notice serves to ensure that all procedural actions are consistent with the current appellate status and to advocate for a suspension of unnecessary legal proceedings that may conflict with the principles outlined by the Federal Rules of Appellate Procedure, particularly while the appeal remains active. This approach aims to prevent any procedural missteps that could affect the resolution of the appeal or extend the litigation unduly while under review by the Sixth Circuit.

> Respectfully submitted, S/Dennis Philipson, Pro Se Defendant PO Box 30142, Alexandría VA 22310 Dated: July 23, 2024

Document 119-1 Filed 07/23/24 Page 1 of 6 PageID 2210

# Exhibit A

# 7/23/24, 5:13 AM Case 2:23+0++++++++022186++Sht Hancego Apabloac Longentin (1) ds9+1 ennis File do 07/22/24e to NB etge 2:20 fy 6f Judgment Page ID 2211

Re: Mid-America Apartment Communities v Dennis Philipson - Response to Motion for Entry of Judgment

From: D Philipson (dphilipson1982@yahoo.com)

To: tmcclanahan@bassberry.com; phillydee100@gmail.com

Cc: pmills@bassberry.com; jgolwen@bassberry.com; jordan.thomas@bassberry.com

Date: Monday, July 22, 2024 at 11:58 AM PDT

External images are now more secure, and shown by default. Change in Settings

Do not contact me by email. Thank you.

Yahoo Mail: Search, Organize, Conquer

On Mon, Jul 22, 2024 at 2:53 PM, McClanahan, Teresa <TMcClanahan@bassberry.com> wrote:

Mr. Philipson.

Attached is a response filed with the Court today. Hard copies will follow via U.S. Mail.

Thank you.

## BASS BERRY+SIMS

#### Teresa McClanahan

Paralegal

Bass, Berry & Sims PLC

150 Third Avenue South Suite 2800 · Nashville, TN 37201

615-259-6787 phone • 615-742-6293 fax

tmcclanahan@bassberry.com • www.bassberry.com

map

7/23/24, 5.13 AM Case 2:23x@voO211.86r Shd Anage ApaDocumontnilids9-dunnisFileolo07/23/24e to NB @gec2e0fy 6f Judgment PageID 2212

I

#### 7/23/24, 5.12 AM Case 2:23-cv-02186-SHL-cgcyahoD00Ume0th1219y1mail EiledH07/23/24186 Page 4 of 6 PageID 2213

#### Re: Contact by mail - Case No. 2:23-cv-02186

- From. D Philipson (dphilipson1982@yahoo.com)
- To. intaketnwd@tnwd uscourts.gov; judy\_easley@tnwd uscourts.gov
- Date Tuesday, July 23, 2024 at 04 47 AM PDT

#### OK - I just wanted the docket noted, but I will provide a pdf. Thank you.

On Tuesday, July 23, 2024 at 04 25:42 AM PDT, Judy Easley <judy\_easley@tnwd.uscourts.gov> wrote

Mr. Phillipson,

Once again we are requesting that you make any request to the court in PDF format. We cannot docket an email

From: D Philipson <dphilipson1982@yahoo.com> Sent: Monday, July 22, 2024 4 21 PM To: IntakeTNWD <IntakeTNWD@tnwd.uscourts.gov> Cc: D Philipson <dphilipson1982@yahoo.com> Subject: Contact by mail - Case No. 2 23-cv-02186

#### CAUTION - EXTERNAL:

CAUTION - EXTERNAL:

Hello,

I am writing to formally request the court's intervention in ensuing compliance with my previous request regarding direct communication from the opposing courise) in the case of Philipson v. Mid-America Apartment Communities Inc., Case No. 2.23-cv-02186.On June 24th, as documented in docket entry 107, I explicitly stated my preference and request that the attorneys with Bass, Berry & Sims PLC representing Mid-America Apartment Communities Inc. (MAA) cease all direct email communication with me.

Despite this clear request, I have continued to receive direct emails from these attorneys In light of these ongoing communications, I respectfully request the court to reiterate and enforce my request that all communications from the opposing counsel be conducted in writing and sent via postal mail to the address provided in the court records.

#### 7/23/24, 5.12 AM Case 2:23-cv-02186-SHL-cgcyahoD00Umeotnla19y1nal Eiledu07/23/24186 Page 5 of 6 PageID 2214

This request is made to ensure proper documentation and for security reasons. If it is possible, I also kindly request that a memo or note be placed on the docket to reflect this communication preference, ensuing that all parties are aware of and adhere to this directive I appreciate the court's attention to this matter and thank you in advance for your assistance in ensuring compliance with this communication request,

Sincerely,

Dennis Philipson

**CAUTION - EXTERNAL EMAIL:** This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

**CAUTION - EXTERNAL EMAIL:** This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

#### Document 119-1 PageID 2215

Filed 07/23/24

Page 6 of 6

#### Monday, June 24, 2024 autica -

107

Sinn Bir26 3:46 PM

NOTICE of Change of Address by Dannia Philipson. (RECEIVED VIA EMAIL) The is to notify you that I am revoking any previous consent for electronic communication as per Federal Rule of Civil Procedure 5(b)(2)(C) and Local Rule 5.2 of the Western District of Tennessee. I demand that nii future documents and communications related to 2 23-cv-02186-SHL-cgc be sent via traditional mail, effective immediately. Due to frequent travels, please send all future correspondence and documents to PO Box 30142Alexandria, VA 2231BAdditionally, for security reasons and in compliance with Federal Rule of Civil Procedure 5.2(a), I inset on the immediate removal of my email eddress from the Public Access to Court Electronic Records (PACER) system to prevent unauthorized access to my personal information. (jae)

Case 2:23-cv-02186-SHL-cgc Document PageID 22	
NOT RECOMMENDED FOR PUBLICATION	
No. 24-56	Filed
UNITED STATES COUL FOR THE SIXTH	
MID-AMERICA APARTMENT COMMUNITIES, INC.,	) ) )
Plaintiff-Appellee,	) ON APPEAL FROM THE UNITED
v.	<ul> <li>) STATES DISTRICT COURT FOR</li> <li>) THE WESTERN DISTRICT OF</li> <li>) TENNESSEE</li> </ul>
DENNIS PHILIPSON,	)
Defendant-Appellant.	) )

ORDER

Before: COLE, READLER, and BLOOMEKATZ, Circuit Judges.

This matter is before the court upon initial review of the notice of appeal.

On May 6, 2024, the district court granted in part Mid-America Apartment Communities, Inc.'s (MAA) motion for judgment and a permanent injunction. See Fed. R. Civ. P. 16(f), 37(b)(2)(A)(vi). The district court found Dennis Philipson liable under each claim asserted by MAA and ordered him to pay damages. The court directed MAA to submit a description of damages it had incurred, and, if necessary, the court noted that it would set a damages hearing by a separate order.

The May 6, 2024, order is not a final judgment for purposes of appeal. "Judgments 'where assessment of damages or awarding of other relief remains to be resolved have never been considered to be "final" within the meaning of 28 U.S.C. § 1291."" Kovacic v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs., 724 F.3d 687, 693 (6th Cir. 2013) (quoting Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 744 (1976)). Nevertheless, the portion of the order granting a permanent injunction is immediately appealable. See 28 U.S.C. § 1292(a)(1). Absent any authorized

extension of time, a notice of appeal from the May 6 order was due to be filed on or before June 5, 2024. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a). Philipson filed a notice of appeal on July 3, 2024.

By prior order, we noted that Philipson had not moved in the district court for an extension of time to appeal under Federal Rule of Appellate Procedure 4(a)(5) or for reopening of the time to appeal under Federal Rule of Appellate Procedure 4(a)(6). We advised Philipson that, unless such a motion was filed in and granted by the district court, we would be required to dismiss the appeal. We therefore directed Philipson to show cause why the appeal should not be dismissed as untimely.

In response, Philipson contends that "significant ambiguity surround[ed] the finality" of the May 6, 2024 order and that MAA's subsequent filings "perpetuated the uncertainty." He claims that his time to appeal should be extended due to "significant judicial confusion and documented instances of potential judicial misconduct." He also requests that his time to appeal be reopened. The majority of his response, however, reargues the merits of the underlying case.

Philipson has failed to show cause why his appeal should not be dismissed. Although he correctly notes that the May 6, 2024 order is not a final judgment, the portion of the order granting a permanent injunction was immediately appealable, but only within 30 days. And we are unable to grant a request for an extension or reopening of his time to appeal. Authority to grant an extension under Rule 4(a)(5) and reopening under Rule 4(a)(6) is limited to the district court. *Martin v. Sullivan*, 876 F.3d 235, 237 (6th Cir. 2017) (per curiam). Moreover, Rule 4(a)(5)(A)(i) requires that a party move for an extension of time "no later than 30 days after" the expiration of the time allotted for an appeal. That period expired on July 5, 2024, before Philipson filed his response in this court. Thus, even if we had the authority to grant his request for an extension under Rule 4(a)(5), we would have to deny it as untimely.

Compliance with the statutory deadline in § 2107(a) is a mandatory, jurisdictional prerequisite that this court may not waive. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 25-27 (2017); *Bowles v. Russell*, 551 U.S. 205, 214-15 (2007). Philipson's failure to timely file a notice of appeal deprives this court of jurisdiction. We note that Philipson is not

without recourse, however, as he may file a notice of appeal once the district court determines damages and enters a final judgment.

The appeal is therefore **DISMISSED**.

ENTERED BY ORDER OF THE COURT

lephens

Kelly L. Stephens, Clerk Kelly L. Stephens, Clerk

#### United States Court of Appeals for the Sixth Circuit

#### U.S. Mail Notice of Docket Activity

The following transaction was filed on 09/05/2024.

**Case Name:** Mid-America Apartment Communities, Inc. v. Dennis Philipson **Case Number:** 24-5614

#### **Docket Text:**

ORDER filed: The Appeal is DISMISSED for lack of jurisdiction. No mandate to issue, decision not for publication. R. Guy Cole, Jr., Circuit Judge; Chad A. Readler, Circuit Judge and Rachel Bloomekatz, Circuit Judge.

The following documents(s) are associated with this transaction:

Document Description: Order

#### Notice will be sent to:

Mr. Dennis Philipson 6178 Castletown Way Alexandria, VA 22310

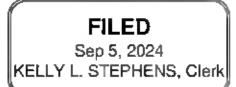
#### A copy of this notice will be issued to:

Mr. John S. Golwen Ms. Paige Waldrop Mills Ms. Wendy R. Oliver Ms. Jordan Elizabeth Thomas

Document 121 PageID 2220 Filed 09/05/24

4 Page 1 of 1

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT



No. 24-5614

MID-AMERICA APARTMENT COMMUNITIES, INC.,

Plaintiff-Appellee,

v.

DENNIS PHILIPSON,

Defendant-Appellant.

Before: COLE, READLER, and BLOOMEKATZ, Circuit Judges.

#### JUDGMENT

THIS MATTER came before the court upon consideration of appellate jurisdiction.

IN CONSIDERATION THEREOF, it is ORDERED that the appeal is DISMISSED.

### ENTERED BY ORDER OF THE COURT

ephens

Kelly L. Stephens, Clerk

Document 122 Filed 11/01/24 Page 1 of 10 PageID 2221

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
ν.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

#### ORDER GRANTING MOTION FOR ENTRY OF JUDGMENT AND DETERMINING DAMAGES AWARD

Before the Court is <u>pro se</u> Defendant Dennis Michael Philipson's Motion for Entry of Judgment, filed June 24, 2024. (ECF No. 106.) Plaintiff Mid-America Apartment Communities, Inc. ("MAA") filed its response on July 22, 2024. (ECF No. 118.) While Mr. Philipson's Motion was pending, he filed a Notice of Appeal, in which he appealed to the Sixth Circuit Court of Appeals this Court's May 6, 2024 Order Granting Motion for Sanctions of Judgment and Granting in Part Motion for Permanent Injunction. (ECF No. 110.) On September 5, 2024, the Sixth Circuit denied Philipson's appeal, finding that "[t]he May 6, 2024, order is not a final judgment for purposes of appeal," as "[j]udgments 'where assessment of damages or awarding of other relief remains to be resolved have never been considered "final" within the meaning of 28 U.S.C. § 1291." (ECF No. 120 at PageID 2216.) The Sixth Circuit further explained that Mr. Philipson could have appealed the portion of the May 6, 2024 Order granting MAA a permanent injunction, but he missed his deadline to do so. (<u>Id.</u> at PageID 2217.) Mr. Philipson's Motion for Entry of Judgment is thus ripe for determination.<sup>1</sup> But first,

the Court must settle the issue that delayed its previous entry of judgment, that is, whether and

how much damages MAA is entitled to given the Court's previous rulings in its favor.

#### **BACKGROUND**

The facts of the case are outlined in several of the Court's previous orders. (See ECF

Nos. 69, 94 & 97.) The Court's May 6, 2024 Order in which it granted MAA's motion for

judgment and found Mr. Philipson liable to MAA is the basis for resolving the issues that

remain. In that Order, the Court found the following:

- Mr. Philipson is liable to MAA for all damages it has suffered by reason of his unlawful acts;
- Mr. Philipson is required to pay enhanced and/or punitive damages to MAA, as determined by this Court, for his deliberate and willful trademark infringement and unfair competition;
- Mr. Philipson is required to pay MAA treble damages for the injury he has caused under Tennessee's Consumer Protection Act ("TCPA");
- Mr. Philipson is required to pay MAA's reasonable attorneys' fees and disbursements incurred during this litigation;
- Mr. Philipson is required to pay MAA all damages to which it is entitled for his defamation, negligence per se, deceit, intentional interference with prospective business advantage, and violations of the Tennessee Personal and Commercial Computer Act of 2003;
- Mr. Philipson is required to pay MAA the cost of this action;
- Mr. Philipson is required to pay pre- and post-judgment interest on all amounts to which Plaintiff is due.

(ECF No. 97 at PageID 1576.)

<sup>&</sup>lt;sup>1</sup> To the extent Mr. Philipson seeks additional relief beyond entry of judgment in his 121page Motion, it is unclear. The Motion outlines ten "key issues" that Mr. Philipson seeks to address: exposing judicial misconduct and bias; demand an immediate judgment; prepare for appeal; protect whistleblower rights; rectify civil rights violations; challenge defamation and restore reputation; correct improper notices and tackle deliberate confusion; ensure fair trial procedures; stop unauthorized subpoenaing and record alteration; and demand repercussions for ethical violations. (ECF No. 106 at PageID 1883–85.) The Court can and will enter judgment, as Mr. Philipson requests, but because he does not otherwise provide adequate basis for any other relief he is requesting or entitled to, his Motion is granted only as to the request for judgment.

In the Order, the Court also directed MAA to submit a detailed description of the

damages it incurred, consistent with the Order's findings, and informed the Parties that it would

set a damages hearing, if necessary. (Id.) MAA filed a financial affidavit on May 17, 2024, in

which it outlined an entitlement to \$578,526.73, plus pre- and post-judgment interests. (ECF No.

99.) The costs were broken down as follows:

- \$6,633.09 spent with the law firm Holland & Knight for the factual investigation into who was responsible for the harassment of MAA;
- \$60,874 spent with Johnathan Bridbord of FIT Consulting Technology, LLC, to assist MAA's counsel in determining who was responsible for disparaging comments online, harassment in various forms of MAA's employees, and an attempted hack into MAA's computer systems;
- \$584.55 spent on purchasing Internet domain names to prevent Mr. Philipson from creating additional infringing webpages;
- \$953.80 spent on credit monitoring and identity theft protection after Mr. Philipson applied for credit cards in the names of MAA's counsel, applied for jobs in her name, made frivolous complaints to the Board of Professional Responsibility, and signed counsel up for unwanted mailing lists;
- \$207,136.32, insofar as the \$69,045.44 in damages above are enhanced under the Lanham Act, and trebled pursuant to MAA's claims under the TCPA; and
- \$371,390.41 spent on attorneys' fees and costs for Bass, Berry & Sims, MAA's counsel and its counsel's staff.<sup>2</sup>

(<u>Id.</u>)

The Court determined that a damages hearing was unnecessary, but ordered MAA to file

exhibits that it omitted from its filing that supported its claim for attorneys' fees. (ECF No. 100.)

The same day, MAA filed a notice correcting the deficiencies. (ECF No. 101.) However, on

<sup>&</sup>lt;sup>2</sup> According to MAA, the costs, which included "service fees, court reporters, deposition transcripts, filing and recording fees, airfare, lodging, meals, postage, subpoena fees, mileage, parking and other travel-related and out-of-pocket expenses," were \$7,893.95 and the attorneys' fees were \$363,496.46. (ECF No. 101-3 at PageID 1601.) In its supplemental filings, MAA indicated that the costs had climbed to \$9,122.61 and the attorneys' fees to \$374,491, for a total of \$383,613.61. (ECF No. 111 at PageID 2048.) MAA explained that the increases were because, "[s]ince the Court has granted permanent injunctive relief, Mr. Philipson has failed to comply with the injunction and insists upon repeatedly emailing MAA employees in violation of the injunction and filing numerous frivolous whistleblower complaints, all of which continue to drive up costs." (Id.)

#### Case 2:23-cv-02186-SHL-cgc Document 122 Filed 11/01/24 Page 4 of 10 PageID 2224

June 13, 2024, the Court entered an Order explaining that MAA's corrected filing failed to comply with the Local Rules that "require parties to submit an affidavit or declaration of counsel detailing the number of hours spent on each aspect of the case and an affidavit or declaration from another attorney in the community, who is not otherwise involved in the case, setting out the prevailing rate in the community for similar services." (ECF No. 102 at PageID 1607 (citing L.R. 54.1(b)(1)–(2)).) The Court gave MAA the opportunity to correct the deficiencies, which it did on July 5, 2024. (ECF Nos. 111 & 112.) Those MAA filings provide the Court with requisite information for it to determine MAA's damages that resulted from Mr. Philipson's actions.<sup>3</sup> Mr. Philipson never responded to any of MAA's submissions detailing its entitlement to damages.<sup>4</sup>

#### **LEGAL STANDARD**

The reasonableness of a fee award is determined by the "lodestar" amount, which is calculated by multiplying the number of hours spent on the litigation by an attorney's hourly rate. <u>Hensley v. Eckerhart</u>, 461 U.S. 424, 433 (1983). Parties seeking attorneys' fees have the

<sup>&</sup>lt;sup>3</sup> On July 8, 2024, MAA filed a Motion for Contempt for Violating Permanent Injunction, alleging that Mr. Philipson violated the terms of the Permanent Injunction. (ECF No. 113.) MAA asked that the Court find Mr. Philipson in Contempt and award its attorneys' fees, along with any other sanctions the Court deemed appropriate. (Id.) The Court will issue a separate order addressing that motion.

<sup>&</sup>lt;sup>4</sup> On June 13, 2024, Mr. Philipson sent a series of emails to the ECF mailboxes of the undersigned and other judges in the district, among other recipients. None of those emails challenged the damages calculations provided by MAA. In fact, in one he indicated that he "would like to get this over with, pay the bill, and move on." (ECF No. 103-1 at PageID 1764.) On June 21, 2024, the Court entered an Order Addressing Email to the Court. (ECF No. 103.) That Order, among other things, informed Mr. Philipson of the "progress of the current proceedings," addressed several matters raised in his email that were not before this Court, and explained why the undersigned's handling of this case did not represent a conflict of interest. (Id.) In his subsequent Motion for Entry for Judgment, Mr. Philipson characterized MAA's damages as "unsubstantiated" and "fictitious," but did not otherwise address them. (See ECF No. 106 at PageID 1882, 1973, 1974.)

# Case 2:23-cv-02186-SHL-cgc Document 122 Filed 11/01/24 Page 5 of 10 PageID 2225

burden of providing evidence of the hours worked and rates claimed. Webb v. Bd. of Educ. of Dyer Cnty., Tenn., 471 U.S. 234, 242 (1985). In this district, the Local Rules require parties to submit an affidavit or declaration of counsel detailing the number of hours spent on each aspect of the case and an affidavit or declaration from another attorney in the community, who is not otherwise involved in the case, setting out the prevailing rate in the community for similar services. L.R. 54.1(b)(1)–(2). Trial courts have broad discretion to determine what constitutes a reasonable hourly rate but should assess the prevailing market rate in the relevant community when evaluating a request for attorneys' fees. Waldo v. Consumers Energy Co., 726 F.3d 802, 821 (6th Cir. 2013). Once parties seeking attorneys' fees establish that the number of hours and the rate claimed are reasonable, the lodestar amount is presumed to be reasonable and recoverable. Imwalle v. Reliance Med. Prods., Inc., 515 F.3d 531, 552–53 (6th Cir. 2008).

#### ANALYSIS

#### I. Damages for Non-Attorneys' Fees and Costs

As a starting point, the Court finds that the \$69,045.44 in non-attorneys' fees-related damages outlined by MAA to be reasonable and necessary, first in rooting out who was responsible for the infringing content, and then in dealing with the intellectual property infringements and harassment MAA suffered at Mr. Philipson's hands. As the Court has previously determined, MAA is entitled to a trebling of those damages under the TCPA.<sup>5</sup>

<sup>&</sup>lt;sup>5</sup> Under the TCPA, "if the court finds that the use or employment of the unfair or deceptive act or practice was a willful or knowing violation of this part, the court may award three (3) times the actual damages sustained and may provide such other relief as it considers necessary and proper, except that the court may not award exemplary or punitive damages for the same unfair or deceptive practice." Tenn. Code. Ann. § 47-18-109(a)(3). In determining whether to award treble damages under the statute, courts are to consider "(A) The competence of the consumer or other person; (B) The nature of the deception or coercion practiced upon the consumer or other person; (C) The damage to the consumer or other person; and (D) The good faith of the person found to have violated this part." Tenn. Code. Ann. § 47-18-109(a)(4).

Therefore, the non-attorneys' fees-related damages MAA is entitled to amount to \$207,136.32.

#### II. Damages for Attorneys' Fees and Costs

The Court also previously determined that MAA is entitled to damages in the form of its attorneys' fees and costs, which are recoverable under both the TCPA and the Lanham Act. <u>See</u> Tenn. Code Ann. § 47-18-109(e)(1) ("Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorney's fees and costs."); 15 U.S.C. § 1117(a) ("The court in exceptional cases may award reasonable attorney fees to the prevailing party.") Therefore, the only determination left for the Court to make is whether the \$383,613.61 in attorneys' fees and costs outlined in MAA's supplemental filings are reasonable.

District courts maintain broad discretion to determine the reasonableness of an attorney's hourly rate as a component of the lodestar computation. <u>Wayne v. Vill. of Sebring</u>, 36 F.3d 517, 533 (6th Cir. 1994). To make that determination, the Court must assess "the prevailing market rate in the relevant community," which is "that rate at which lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record." <u>Adcock-Ladd v. Sec'y of Treasury</u>, 227 F.3d 343, 350 (6th Cir. 2000). A court may consider "a party's submissions, awards in analogous cases, state bar association guidelines, and its own knowledge and experience in handling similar fee requests." <u>Van Horn v. Nationwide Prop. and Cas. Ins.</u> <u>Co.</u>, 436 F. App'x 496, 499 (6th Cir. 2011). In calculating the appropriate amount of attorneys'

Mr. Philipson's numerous filings in this case demonstrate that he is competent. His acts are egregious, as he, among other things, repeatedly infringed on MAA's intellectual property, impersonated MAA's employees, and harassed them and MAA's attorneys in a variety of significant and elaborate ways. The damages MAA, its employees, and its counsel suffered were significant as is detailed herein and in the Court's previous orders. Finally, Mr. Philipson's repeated deleterious actions cannot be said to have been made in good faith.

#### Case 2:23-cv-02186-SHL-cgc Document 122 Filed 11/01/24 Page 7 of 10 PageID 2227

fees, it is well established that paralegal fees are also recoverable. <u>See, e.g., Richlin Sec. Serv.</u> <u>Co. v. Chertoff</u>, 553 U.S. 571, 580–81 (2008).

The Supplemental Declaration of Paige Waldrop Mills, MAA's lead attorney on the matter, included an exhibit that detailed the hours spent by her and the other attorneys and staff that worked on the matter, and their rates for the work that they completed. (See ECF No. 111-1.) The rates range from \$415 to \$675 per hour for attorneys, \$295 to \$380 per hour for litigation technology specialists and managers, and \$275 to \$300 for paralegals. (Id. at PageID 2052.)

MAA also submitted the Declaration of Randall D. Noel, an attorney with Butler Snow, LLP, in support of its claim for fees. (ECF No. 112.) Noel asserted that he has practiced law in Memphis for more than forty years and is admitted to practice before all U.S. District Courts in Tennessee, Mississippi, and Arkansas, as well as the U.S. Courts of Appeals for the Fifth and Sixth Circuits and the U.S. Supreme Court. (<u>Id.</u> at PageID 2056.) Noel opined that, after reviewing the docket, Mills's declaration and attached exhibit, and based on his professional experience and practice, the rates charged by MAA's attorneys and their colleagues are within the prevailing market rates and the hours they spent on this matter were reasonable and necessary to achieve the outcome obtained. (<u>Id.</u> at PageID 2060.)

Based on these submissions, the nature of the case, the skills of counsel, the market rates for attorneys and related staff in the community, and the fact that Mr. Philipson has not contested the hourly rates charged, the Court concludes that MAA has met its burden of establishing the reasonableness of the hourly rates.

The Court also finds that Plaintiffs have met their burden of establishing the reasonableness of hours spent on the case. Attorneys seeking fees and costs are obligated "to

7

# Case 2:23-cv-02186-SHL-cgc Document 122 Filed 11/01/24 Page 8 of 10 PageID 2228

'maintain billing time records that are sufficiently detailed to enable courts to review the reasonableness of the hours expended.'" <u>Smith v. Serv. Master Corp.</u>, 592 F. App'x 363, 371 (6th Cir. 2014) (quoting <u>Wooldridge v. Marlene Indus. Corp.</u>, 898 F.2d 1169, 1177 (6th Cir. 1990)). While not required to record the minute-by-minute details of their work, counsel should "identify the general subject matter of . . . time expenditures." <u>Id.</u> (quoting <u>Hensley</u>, 461 U.S. at 437 n.12.). Thus, billing records will suffice when they offer "sufficient detail and probative value' for the court to determine the legitimacy of the hours expended." <u>Monroe v. FTS USA</u>, <u>LLC</u>, No. 2:08-cv-02100-JTF-CG, 2014 WL 4472720, at \*8 (W.D. Tenn. July 28, 2014) (citing <u>Imwalle</u>, 515 F.3d at 553–54 (finding time entries such as "conference with," "research," "review file," "review documents," etc. sufficiently descriptive when read in context of whole billing statement and the litigation timeline)).

The description of the 665.1 hours the lawyers and staff spent on this matter are painstakingly detailed in six-minute increments. (See ECF No. 111-1 at PageID 2052–54.) Mr. Philipson has asserted that the Court's actions have prolonged the litigation and driven up its costs. (See ECF No. 105 at PageID 1829.) However, he mostly has himself to blame for any increased time MAA's attorneys and staff had to spend on the matter, and the costs MAA correspondingly incurred, due to his failure to cooperate in the litigation. Mr. Philipson's obstinance is illustrated by, although not confined to, his failure to respond to motions and discovery requests, his failure to attend Court-scheduled hearings, and his repeated filings that frequently bordered on the frivolous, but nevertheless necessitated MAA's coursel's expenditure of time.<sup>6</sup> Beyond this, Mr. Philipson's failure to specifically object to any of the billing entries

<sup>&</sup>lt;sup>6</sup> For instance, MAA's attorney's and staff spent 7.4 hours, incurring \$4,195 in costs, addressing Mr. Philipson's baseless last-minute objections to his deposition, which eventually was conducted as planned. (See ECF No. 111-1 at PageID 2053.) It also incurred \$2,695 in fees

offered by MAA renders his blanket, unsupported objections baseless.

Given the foregoing, the Court finds that the attorneys' fees and costs incurred by MAA are reasonable, and total \$383,613.61. When the \$207,136.32 for its non-attorneys' fees are added to this total, MAA is entitled to \$590,749.93.

#### III. Pre- and Post-Judgment Interest

Finally, the Court previously found that Mr. Philipson was liable for pre- and postjudgment interest on all amounts to which Plaintiff is due. (ECF No. 97.)

The post-judgment interest rate "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding [] the date of the judgment." 28 U.S.C. § 1961(a). The pre-judgment interest rate shall be calculated using the same formula. <u>See Wallace v. FedEx Corp.</u>, No. 08-2145-V, 2011 WL 13274366, at \*3 (W.D. Tenn. May 2, 2011) ("An approved method for calculating prejudgment interest is the rate used for postjudgment interest under 28 U.S.C. § 1961.") (citing <u>Ford v. Uniroyal Pension Plan</u>, 154 F.3d 613, 619 (6th Cir. 1998)). All damages, including reasonable attorneys' fee and costs, are subject to interest. <u>See Caffey v. Unum Life Ins. Co.</u>, 302 F.3d 576, 589 (6th Cir. 2002).

Post-judgment interest shall be calculated beginning May 6, 2024, the date the Court entered its Order Granting Motion for Sanctions of Judgment and Granting in Part Motion for Permanent Injunction. (ECF No. 97.) <u>See Caffey v. Unum Life Ins. Co.</u>, 302 F.3d 576, 591 (6th Cir. 2002) ("Postjudgment interest on an award of legal fees begins to run from the date of the

attending a Court-ordered mediation with Chief Magistrate Judge Tu M. Pham that Mr. Philipson failed to attend without warning. (<u>Id.</u>) The examples of similar instances are legion within the billing entries.

# Case 2:23-cv-02186-SHL-cgc Document 122 Filed 11/01/24 Page 10 of 10 PageID 2230

initial judgment recognizing plaintiff's unconditional right to receive legal fees, not from the judgment that ultimately quantifies the fee award.") (citing <u>Associated Gen. Contractors of Ohio,</u> <u>Inc. v. Drabik</u>, 250 F.3d 482, 495 (6th Cir. 2001)). The applicable post-judgment interest rate is therefore 5.19%. <u>See https://perma.cc/DB4Q-BDSQ</u>. MAA shall be entitled to post-judgment interest at the above rate until the damages are paid in full.

The Court finds that an appropriate triggering date for pre-judgment interest is April 3, 2023, the day MAA filed its complaint. (ECF No. 1.) Pre-judgment interest on \$590,749.93 for thirteen months, i.e., April 3, 2023, through May 6, 2024, at the 5.19% rate outlined above, equals \$33,214.91. See https://perma.cc/PT2P-S42X.

#### **CONCLUSION**

Consistent with the foregoing, MAA is entitled to \$623,964.84. That includes

\$590,749.93 in damages, attorneys' fees, and costs, and \$33,214.91 in pre-judgment interest.

MAA shall also be entitled to post-judgment interest at a rate of 5.19% on the damages,

attorneys' fees, and costs awarded, consistent with the above.

Because the Court is contemporaneously entering Judgment, Mr. Philipson's Motion for Entry of Judgment is **GRANTED**.

IT IS SO ORDERED, this 1st day of November, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

Case 2:23-cv-02186-SHL-cgc	Document 123	Filed 11/01/24	Page 1 of 1
-	PageID 2231		-

#### N THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	)
Plaintiff,	)
V.	)
DENNIS MICHAEL PHILIPSON,	)
Defendant.	)

Case No. 2:23-cv-02186-SHL-cgc

#### JUDGMENT

**JUDGMENT BY COURT.** This action having come before the Court on Plaintiff Mid-America Apartment Communities, Inc.'s Complaint (ECF No. 1), filed April 3, 2024,

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that, in accordance with the Order Granting Motion for Entry of Judgment and Determining Damages Award, filed on November 1, 2024 (ECF No. 122), judgment is awarded to Mid-America Apartment Communities, Inc. in the amount of \$207,136.32 for damages, \$383,613.61 for attorneys' fees and costs, and \$33,214.91 in pre-judgment interest, as well as post-judgment interest at a rate of 5.19% per annum from May 6, 2024, until the above damages are paid in full.

APPROVED:

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

November 1, 2024 Date

Case	2:23	-CV-	021	.86	-SH	L-cgc

Document 124 Filed 11/01/24 Page 1 of 1 PageID 2232

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	
V.	
DENNIS MICHAEL PHILIPSON,	
Defendant.	

Case No. 2:23-cv-02186-SHL-cgc

#### **ORDER TO SHOW CAUSE**

Before the Court is Plaintiff Mid-America Apartment Communities, Inc.'s Motion for Contempt for Violating Permanent Injunction, filed July 8, 2024. (ECF No. 113.) <u>Pro se</u> Defendant Dennis Michael Philipson has not responded to the Motion and his deadline to do so has long since passed. <u>See</u> L.R. 7.2(a)(2). Therefore, Mr. Philipson is **ORDERED TO SHOW CAUSE**, by November 15, 2024, as to why he has not responded to the Motion and why the Motion should not be granted in its entirety. If Mr. Philipson fails to respond, the facts set forth in the Motion will be deemed true, and the Court may proceed to issuing a ruling on the Motion without a hearing.

IT IS SO ORDERED, this 1st day of November, 2024.

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

Document 125 PageID 2233

Filed 11/05/24 Page 1 of 1

v. 08/10)	)	

AO 120 (Rev. 08/10)		<b>.</b>
]	Mail Stop 8 S. Patent and Trademark O P.O. Box 1450 Idria, VA 22313-1450	Office REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
filed in the U.S. Dist	ő	15 U.S.C. § 1116 you are hereby advised that a court action has been         Western District of Tennessee       on the following         ion involves 35 U.S.C. § 292.):
DOCKET NO. 2:23-cv-2186	DATE FILED 4/2/2023	U.S. DISTRICT COURT Western District of Tennessee
PLAINTIFF	17272020	DEFENDANT
Mid America Apartment	Communities, Inc.	Doe-1 et al (Dennis Michael Philipson)
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,009,475	8/6/2011	Mid-America Apartment Communities, Inc.
2 3,268,349	7/24/2007	Mid-America Apartment Communities, Inc.
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
		dment 🗌 Answer	Cross Bill	Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLD	ER OF PATENT OR	TRADEMARK
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

11/1/2024 Judgment -docket entry 123 (copy attached)

CLERK	(BY) DEPUTY CLERK	DATE
Wendy R. Oliver	Cassandra Ikerd	11/5/2024

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

#### N THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	)
Plaintiff,	) )
V.	)
DENNIS MICHAEL PHILIPSON,	)
Defendant.	)

Case No. 2:23-cv-02186-SHL-cgc

#### JUDGMENT

**JUDGMENT BY COURT.** This action having come before the Court on Plaintiff Mid-America Apartment Communities, Inc.'s Complaint (ECF No. 1), filed April 3, 2024,

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that, in accordance with the Order Granting Motion for Entry of Judgment and Determining Damages Award, filed on November 1, 2024 (ECF No. 122), judgment is awarded to Mid-America Apartment Communities, Inc. in the amount of \$207,136.32 for damages, \$383,613.61 for attorneys' fees and costs, and \$33,214.91 in pre-judgment interest, as well as post-judgment interest at a rate of 5.19% per annum from May 6, 2024, until the above damages are paid in full.

APPROVED:

<u>s/ Sheryl H. Lipman</u> SHERYL H. LIPMAN CHIEF UNITED STATES DISTRICT JUDGE

November 1, 2024 Date Document 126 Filed 12 PageID 2235

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT	)
COMMUNITIES, INC.,	)
Plaintiff-Appellee,	)
V.	)
DENNIS MICHAEL PHILIPSON,	)
Defendant-Appellant	)

Case No.: 2:23-cv-02186-SHL-cgc Notice of Appeal (December 2, 2024)

#### Case No.: 2:23-cv-02186-SHL-cgc

#### **Notice of Appeal**

To the Clerk of the Court and all parties concerned:

Notice is hereby given that **Dennis Michael Philipson**, the Defendant in the above-captioned case, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the final judgment entered by the United States District Court for the Western District of Tennessee on **November 1, 2024**, as well as all interlocutory orders leading to the judgment.

This appeal challenges the judgment awarding \$207,136.32 in damages, \$383,613.61 in attorneys' fees and costs, and \$33,214.91 in pre-judgment interest, as well as post-judgment interest at a rate of 5.19% per annum until paid in full, along with other related rulings and findings.

The Defendant also intends to raise issues regarding procedural irregularities that compromised the fairness and integrity of the trial proceedings, including but not limited to:

 Failure to Update Contact Information: The Court and opposing counsel continued to use an outdated email address and physical address for service and communications despite being notified of updated contact information. This resulted in critical delays in the Defendant receiving motions, notices, and rulings.

Document 126 PageID 2236

Page 2 of 4

- 2. **Improper Service of Documents:** Court filings and communications were not properly served electronically, as required by Federal Rules of Civil Procedure, causing further delays and depriving the Defendant of a reasonable opportunity to prepare responses.
- 3. **Delays in Mailings:** Key court documents were sent to the wrong physical address and email address, even after the Defendant explicitly updated the physical address to the Defendant's home address. These delays impaired the Defendant's ability to participate effectively in the proceedings.
- Errors in Award Calculations: The judgment includes errors in the calculation of damages, attorneys' fees, and pre-judgment interest that are unsupported by the evidence and law.
- 5. Violations of Constitutional Rights: The Defendant's constitutional right to due process was violated due to the cumulative effect of these procedural errors, as they critically impacted the Defendant's ability to present a full and fair defense.

A formal appellate brief will provide further details on these issues and others, demonstrating how these errors materially affected the outcome of the case.

#### Dated this 2nd day of December 2024.

Respectfully submitted, /s/ Dennis Michael Philipson

~6

**Dennis Michael Philipson** Defendant - Appellant, Pro Se MikeyDPhilips@gmail.com

Document 126 PageID 2237 Filed 12/02/24 Page 3 of 4

Page **3** of **4** 

6178 Castletown Way Alexandria, VA 22310

#### **Certificate of Service**

I hereby certify that on December 2, 2024, a true and correct copy of the foregoing Notice of Appeal was served via PACER and United States Postal Service upon the following counsel for Plaintiff-Appellee:

Paige Waldrop Mills, BPR No. 016218 BASS, BERRY & SIMS PLC Suite 2800 150 3rd Ave. South Nashville, Tennessee 37201 Tel: (615) 742-6200

John Golwen, BPR No. 014324 Jordan Thomas, BPR No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant-Appellant

16

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant, Pro Se

Document 126 PageID 2238 Filed 12/02/24

Page 4 of 4

Page 4 of 4

Case 2:23-cv-02186-SHL-cgc Document 127 Filed 12/02/24 Page 1 of 1 PageID 2239

> IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE CIVIL DIVISION

## **CHANGE OF ADDRESS**

DATE December 2, 2024

Please Print the following information:	
LAST NAME Philipson	FIRST NAME Dennis
MIDDLE NAME OR INITIAL M	
CASE NUMBER 2:23-CV-02186-5	SHL-cgc

OLD ADDRESS	
STREET ADDRESS PO Box 30142	
<sub>CITY</sub> Alexandria	
STATE VA	
ZIP CODE 22310	_
PHONE NUMBER 703-581-5689	
EMAIL ADDRESS Dphilipson1982@yahoo.com	

#### **NEW ADDRESS**

STREET ADDRESS 6178 Castletown Way	
<sub>CITY</sub> Alexandria	
STATE VA - New Phone Number	
ZIP CODE 22310	

SIGNATURE\_\_\_\_

New Email: MikeyDPhilips@gmail.com New Phone: 949-432-6184

475d-be59-

Digitally signed by c62c61e3-e4ef-475d-be59-feba38810746 C62c61e3-e4ef475d-be59-feba38810746 DN: CN=c62c61e3-e4ef-475d-be59-feba36810746 Reason: I am the author of this document feba36810746

Document 128 F PageID 2245 (1 of 5)

## UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Kelly L. Stephens Clerk 100 EAST FIFTH STREET, ROOM 540 POTTER STEWART U.S. COURTHOUSE CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000 www.ca6.uscourts.gov

Filed: December 03, 2024

Mr. Dennis Philipson 6178 Castletown Way Alexandria, VA 22310

> Re: Case No. 24-6082, *Mid-America Apartment Communities, Inc. v. Dennis Philipson* Originating Case No. : 2:23-cv-02186

Dear Sir,

This appeal has been docketed as case number **24-6082** with the caption that is enclosed on a separate page. Please review the caption for accuracy and notify the Clerk's office if any corrections should be made. The appellate case number and caption must appear on all filings submitted to the Court.

As the appellant, when you submit motions, briefs, or any other documents to the Clerk's office, send only 1 original, which you have signed. Copies are no longer necessary. Do not staple, paper clip, tab or bind pro se motions or briefs sent to the Clerk's office -- these documents are scanned and staples etc. create paper jams. You must mail opposing counsel a copy of every document you send to the Clerk's office for filing.

Opposing counsel will docket pleadings as an ECF filer. Check the ECF page on the court's web site <u>www.ca6.uscourts.gov</u> for additional information about ECF filing if you are not familiar with it. The following case opening items are due by **December 17, 2024**. The Disclosure of Corporate Affiliations is now an automated entry. Filers may still use the form 6CA-1 located on the Court's website if the automated entry does not provide sufficient space.

Appellee:	Appearance of Counsel
	Disclosure of Corporate Affiliation
	Application for Admission to 6th Circuit Bar (if applicable)

Enclosed is a transcript order form should you require transcript of a hearing(s) to support your arguments on appeal. If you do order transcript, the form must be filed by **December 17**, **2024**. A copy of the form must also be provided to the court reporter along with your payment for the transcript. Please see page 2 of the transcript order for additional information. If transcript is not ordered by this deadline, a briefing schedule will issue. The Clerk's office cannot give you legal advice but if you have questions, please contact the office for assistance.

Sincerely yours,

s/Roy G. Ford Case Manager Direct Dial No. 513-564-7016

cc: Mr. John S. Golwen Ms. Paige Waldrop Mills Ms. Jordan Elizabeth Thomas

Enclosure

**OFFICIAL COURT OF APPEALS CAPTION FOR 24-6082** 

MID-AMERICA APARTMENT COMMUNITIES, INC.

Plaintiff - Appellee

v.

DENNIS PHILIPSON

Defendant - Appellant

L-cgc Document 128 Filed 12/03/24 Page 4 of 5 PageID 2248

#### UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

#### **Transcript Order for Pro Se Parties**

Only parties not represented by counsel may use this form. Attorneys must file transcript orders electronically in CM/ECF. Include on this form all transcripts that you are ordering from *one* court reporter. Use a separate form for each court reporter.

SHORT CASE TITLE	NAME OF DISTRICT COURT	DISTRICT COURT CASE NUMBER
COURT OF APPEALS CASE NUMBER	DATE NOTICE OF APPEAL FILED BY	CLERK OF DISTRICT COURT
	COURT REPORTER	NAME OF ORDERING PARTY

<b>A.</b>	Check the applicable provision:	B. Provide a description, including dates, of the proceedings
	I am ordering a transcript (See Section B)	for which a transcript is required (i.e. oral argument,
	I am not ordering a transcript	sentencing, etc.)
	Reason for not ordering a transcript:□Transcript is already on file in district court□Transcript is unnecessary for appeal purposes□No Hearings	<b>Method of Payment</b> Private Funds  Other
C.	When transcript is funded by the Criminal Justice Act,	D. Deliver transcript to: (Appellant's name, address,
	transcript of the following proceedings will be provided only if specially authorized by the district court	telephone)
	only it specially authorized by the district court	
	Voir Dire	
	Jury Instructions	
	Opening statement of plaintiff	
	Closing argument of plaintiff	
	Closing argument of plaintiff	
	Opening statement of defendant	

Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for dismissal of appeal.

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of transcript. See						
FRAP 10(b). I understand that unless I have already ordered the transcript, I shall order its preparation at the time						
required by FRAP and the Local Rules.						
ORDERING PARTY'S SIGNATURE	DATE					

ALLOWANCE BY THE COURT OF LEAVE TO PROCEED IN FORMA PAUPERIS IN A CIVIL APPEAL DOES NOT ENTITLE THE LITIGANT TO HAVE TRANSCRIPT AT GOVERNMENT EXPENSE.

THIS ORDER FORM MUST BE SENT TO BOTH THE COURT REPORTER AND THE COURT OF APPEALS.

(4 of 5)

#### UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

#### INSTRUCTIONS FOR PRO SE PARTIES ORDERING TRANSCRIPT

1. Many appeals do not require a transcript. If you are not represented by an attorney and are ordering transcript related to your appeal, you must complete this form and mail it to the Clerk's Office at this address:

United States Court of Appeal 540 Potter Stewart U.S. Courthouse 100 East Fifth Street Cincinnati, Ohio 45202

- 2. You must also provide a copy of this form to the court reporter along with your payment for the transcript.
- 3. Complete a separate form for each court reporter from whom you are ordering transcript. Do not include more than one court reporter on an order form.
- 4. If you have filed a proper transcript order form, the court of appeals clerk will forward the transcript order to the court reporter for processing. However, *you* must contact each court reporter from whom you are ordering transcript, provide a copy of this order, and pay for the transcript.
- 5. The court reporter will charge you the necessary fees for transcript. The court reporter may require you to pay all fees before beginning work on the transcript.
  - **NOTE:** Being granted pauper status by the district court or leave to appeal *in forma pauperis* does **not** automatically entitle you to a free transcript.
  - If you believe that you are entitled to transcript without paying the fee, you must file a motion for transcript at government expense, demonstrating that you are indigent *and* that the appeal is not frivolous but presents a substantial question.
- 6. Failure to arrange for payment of transcript, to properly order transcript, or to meet other court deadlines can result in the dismissal of your appeal.

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT,		)	
COMMUNITIES, INC.	Plaintiff,	)	
v.		) )	Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND
DENNIS PHILIPSON,		)	
	Defendant.	)	

#### NOTICE OF CHANGE OF ADDRESS

PLEASE TAKE NOTICE THAT, effective January 6, 2025, the undersigned counsel with

Bass, Berry & Sims PLC's Nashville office may be contacted at the following mailing address: 21

Platform Way South, Suite 3500, Nashville, TN 37203

Dated: January 17, 2025.

Respectfully Submitted,

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC 21 Platform Way South, Suite 3500 Nashville, TN 37203 Tel: (615) 742-6200 pmills@bassberry.com

John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 Document 129 Filed ( PageID 2251

BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com jordan.thomas@bassberry.com

Counsel for Mid-America Apartment Communities, LLC

Document 129 Filed 01/17/25 Page 3 of 3 PageID 2252

#### **CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2025 the forgoing was served on the individual below by the ECF filing system, electronic mail and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 MikeydPhilips@gmail.com

> <u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTI COMMUNITIES, INC.	MENT ,	)	
	Plaintiff,	- Ş	
v.			Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND
DENNIS PHILIPSON,		ý	our printing
	Defendant.	)	

#### SUPPLEMENTAL DECLARATION OF ALEX TARTERA IN SUPPORT OF MAA'S MOTION FOR CONTEMPT

I, Alex Tartera, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct:

1. I am the Vice President of Cyber Security for Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff"), and I submit this supplemental declaration in further support of MAA's Motion for Contempt For Violating Permanent Injunction and Incorporated Memorandum of Law (the "Motion for Contempt") against Defendant Dennis Philipson ("Philipson").

2. On Monday, October 14, 2024, Dennis Philipson attempted to email MAA personnel from the email address <u>rimmelleo@outlook com</u> A true and correct copy of this email is attached hereto as **Exhibit 1**.

3. Philipson also sent the email, which was disparaging to MAA in violation of this Court's Injunction, to individuals at the Department of Justice and Pro Publica. (See Exhibit 1).

4. Attached hereto as **Exhibit 2** is a true and correct copy of a report that I created that shows the metadata of Philipson's email to MAA personnel on October 14.

#### Case 2:23-cv-02186-SHL-cgc Document 130 Filed 01/17/25 Page 2 of 4 PageID 2254

 As shown in the report, Philipson sent the email directly to MAA personnel, approximately 70 recipients. (See Exhibit 2).

6. Although MAA has created a content filter designed to block emails from Philipson, MAA personnel still received the latest email because it was sent from a new email address. (See Exhibit 2).

 MAA continues to update its content filter as it identifies unique aspects related to Philipson and blocks email addresses as Philipson changes them.

 Philipson also continues to use MAA personnel's names and email addresses to apply for jobs and sign up for subscriptions.

9. On October 21, 2024, MAA Regional Vice President Jay Blackman received an email from <a href="mailto:avalonbay@myworkday.com">avalonbay@myworkday.com</a> notifying him that his application had been received. A true and correct copy of this email is attached hereto as **Exhibit 3**.

10. That same day, Mr. Blackman also received two emails in his spam folder from <u>usdoj@public.govdelivery.com</u> welcoming him as a new user and confirming his subscription change. A true and correct copy of a screenshot of Mr. Blackman's spam folder is attached hereto as **Exhibit 4**.

11. Mr. Blackman never applied for a job through Workday, nor did he sign up for a subscription with the Department of Justice.

12 On or about November 1, 2024, Philipson applied for a Regional Vice President position with MAA using one of his fake personas—Tommy Grimey. In addition to being an impermissible contact with MAA, this "resume" is replete with defamatory statements and innuendo about MAA, all in violation of the injunction.

2

#### Case 2:23-cv-02186-SHL-cgc Document 130 Filed 01/17/25 Page 3 of 4 PageID 2255

13. In addition to the above, Philipson continues to abuse the Whistleblower Portal with false and defamatory allegations that have already been investigated numerous times and have been determined to be without merit, sometimes filing multiple submissions per day. His continued abuse of this system is harassing, creates additional work and expense for MAA, and is not a legitimate use of the process. As of the filing of this Declaration, Philipson's most recent submissions were on January 6, 2025. *See* Whistleblower Submissions, attached hereto as **Exhibit 5**.

 I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January [2], 2025.

Alex Tartera

Document 130 Filed 01/17/25 Page 4 of 4 PageID 2256

#### **CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2025 the forgoing was served on the individual below by the ECF filing system, electronic mail and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 MikeydPhilips@gmail.com

> <u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

PageID 2257

# EXHIBIT 1

#### Case 2:23-cv-02186-SHL-cgc Document 130-1 Filed 01/17/25 Page 2 of 2 PageID 2258

- From (Envelope): rimmelleo@outlook.com
- · From (Header): rimmelleo@outlook.com
- To: jessup.franklin@propublica.org,kenneth.robinson@usdoj.gov,steven.jameson@usdoj.gov
- CC: brian.fowler@usdoj.gov
- Subject: Fw: Mid-America Apartment Communities Inc MAA Announces Minor Damage from Hurricanes Helene and Milton
- Sent: Mon, 14 October 2024 18:11

It's clear that someone on the inside is working with the government, setting the stage to take down MAA, the attorneys, the TN courts, and the whole damn thing, all to save their own ass. Non-prosecution agreements are a powerful tool—they give cover to certain players, allowing them to walk away untouched while others are left to face the fallout. The clock is ticking for RealPage to respond to the DOJ complaint—they've got until November 11, and their response will be filled with the usual bullshit and lies, just like before.

Those emails from the Cortland raid, along with the boxes of documents and disks sent to the DOJ, have no doubt been invaluable in piecing it all together. Even filings and statements and submissions made over 20 years ago can still come back to haunt you—none of that releases anyone from future prosecution. When the time comes, those recordings will be essential, capturing what really went down behind the scenes. This is just the beginning. For more on what's unfolding, visit <u>etassociation.org</u>—you'll find what you need there. Marketing opportunity soon.



On

Mid-America Apartment Communities Inc has added a new press release to its website:

MAA Announces Minor Damage from Hurricanes Helene and Milton

Click here for a complete listing of Mid-America Apartment Communities Inc press releases.

To unsubscribe from this list, please visit the email alert section of the Mid-America Apartment Communities Inc site.

Date Sent: 2024-10-14 6:34:18 PM

Powered by Q4 Inc.

## Case 2:23-cv-02186-SHL-cgc Document 130-2 Filed 01/17/25 Page 1 of 3 PageID 2259

					Attachmen		Spam	
Status From (Envelope)	From (Header)	То	Subject Sent Date/Time Re: [EXTERNAL] Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and	IP Address	t Route	Info	Score	Spam Detection
Accepted <rob.delpriore@maac.com></rob.delpriore@maac.com>	<rob.delpriore@maac.com></rob.delpriore@maac.com>	" <jennifer.patrick@maac.com>"</jennifer.patrick@maac.com>	Milton Mon Oct 14 21:13:35 ED Re: [EXTERNAL] Re: Mid-America Apartment Communities Inc -	2024 104.47.58.172	internal	Awaiting indexing	0	
Accepted <rob.delpriore@maac.com></rob.delpriore@maac.com>	<rob.delpriore@maac.com></rob.delpriore@maac.com>	" <andrew.schaeffer@maac.com>"</andrew.schaeffer@maac.com>	MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 21:13:03 ED Re: [EXTERNAL] Re: Mid-America Apartment Communities Inc -	2024 104.47.58.168	internal	Awaiting indexing	0	
Archived <rob.delpriore@maac.com></rob.delpriore@maac.com>	DelPriore, Rob <rob.delpriore@maac.com></rob.delpriore@maac.com>	"Schaeffer, Andrew <andrew.schaeffer@maac.com>"</andrew.schaeffer@maac.com>	MAA Announces Minor Damage from Hurricanes Helene and Milton Re: [EXTERNAL] Re: Mid-America Apartment Communities Inc -	2024 104.47.58.168	internal	Indexed and archived		
Archived <rob.delpriore@maac.com></rob.delpriore@maac.com>	DelPriore, Rob <rob.delpriore@maac.com></rob.delpriore@maac.com>	"Patrick, Jennifer <jennifer.patrick@maac.com>"</jennifer.patrick@maac.com>	MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 21:13:00 ED	2024 104.47.58.172	internal	Indexed and archived		
Held <tommygrimey@outlook.com></tommygrimey@outlook.com>	<tommygrimey@outlook.com></tommygrimey@outlook.com>	" <amber.fairbanks@maac.com>"</amber.fairbanks@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 20:30:23 ED	2024 40.92.20.104	inbound	Message Hold Applied - Spam Signature poli	licy 3	Aggressive
Held <tommygrimey@outlook.com></tommygrimey@outlook.com>	<tommygrimey@outlook.com></tommygrimey@outlook.com>	" <jay.blackman@maac.com>"</jay.blackman@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 20:30:23 ED	2024 40.92.20.104	inbound	Message Hold Applied - Spam Signature pol	licy 3	Aggressive
Held <tommygrimey@outlook.com></tommygrimey@outlook.com>	<tommygrimey@outlook.com></tommygrimey@outlook.com>	" <rob.delpriore@maac.com>"</rob.delpriore@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 20:30:23 ED	2024 40.92.20.104	inbound	Message Hold Applied - Spam Signature pol	licy 3	Aggressive
Held <tommygrimey@outlook.com></tommygrimey@outlook.com>	<tommygrimey@outlook.com></tommygrimey@outlook.com>	" <clay.holder@maac.com>"</clay.holder@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 20:30:23 ED	2024 40.92.20.104	inbound	Message Hold Applied - Spam Signature pol	licy 3	Aggressive
Held <tommygrimey@outlook.com></tommygrimey@outlook.com>	<tommygrimey@outlook.com></tommygrimey@outlook.com>	" <melanie.carpenter@maac.com>"</melanie.carpenter@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 20:30:23 ED Fwd: [EXTERNAL] Re: Mid-America Apartment Communities Inc	2024 40.92.20.104	inbound	Message Hold Applied - Spam Signature pol	licy 3	Aggressive
Archived <andrew.schaeffer@maac.com></andrew.schaeffer@maac.com>	Schaeffer, Andrew <andrew.schaeffer@maac.com></andrew.schaeffer@maac.com>	"DelPriore, Rob <rob.delpriore@maac.com>"</rob.delpriore@maac.com>	- MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:31:00 ED FW: [EXTERNAL] Re: Mid-America Apartment Communities Inc -	2024 104.47.55.177	internal	Indexed and archived		
Archived <jennifer.patrick@maac.com></jennifer.patrick@maac.com>	Patrick, Jennifer <jennifer.patrick@maac.com></jennifer.patrick@maac.com>	"DelPriore, Rob <rob.delpriore@maac.com>"</rob.delpriore@maac.com>	MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:27:00 ED FW: [EXTERNAL] Re: Mid-America Apartment Communities Inc -	2024 104.47.66.49	internal	Indexed and archived		
Archived <investorrelations@maac.com></investorrelations@maac.com>	Investor Relations <investorrelations@maac.com></investorrelations@maac.com>	"Schaeffer, Andrew <andrew.schaeffer@maac.com>;Patrick, Je</andrew.schaeffer@maac.com>	MAA Announces Minor Damage from Hurricanes Helene and ennir Milton Mon Oct 14 19:24:00 ED	2024 104.47.55.44	internal	Indexed and archived		
Archived <2xhesvwc@duck.com>	2xheswwc@duck.com<2xheswwc@duck.com>	"Investor Relations <investorrelations@maac.com>"</investorrelations@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:23:00 ED	2024 20.67.222.11	inbound	Indexed and archived	0	Aggressive
Archived <rob.delpriore@maac.com></rob.delpriore@maac.com>	DelPriore, Rob <rob.delpriore@maac.com></rob.delpriore@maac.com>	"McGown, Gigi <gigi.mcgown@maac.com>;Golwen, John S.(jgo</gigi.mcgown@maac.com>	FW: Mid-America Apartment Communities Inc - MAA <sub>DWe</sub> Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:20:00 ED RE: [EXTERNAL] Fw: Mid-America Apartment Communities Inc -	2024 104.47.55.174	outbound	Indexed and archived		
Archived <rob.delpriore@maac.com></rob.delpriore@maac.com>	DelPriore, Rob <rob.delpriore@maac.com></rob.delpriore@maac.com>	"Fairbanks, Amber <amber.fairbanks@maac.com>"</amber.fairbanks@maac.com>	MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:15:00 ED Fwd: [EXTERNAL] Fw: Mid-America Apartment Communities	2024 104.47.57.41	internal	Indexed and archived		
Archived <amber.fairbanks@maac.com></amber.fairbanks@maac.com>	Fairbanks, Amber <amber.fairbanks@maac.com></amber.fairbanks@maac.com>	"DelPriore, Rob <rob.delpriore@maac.com>"</rob.delpriore@maac.com>	Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:14:00 ED	2024 104.47.66.41	internal	Indexed and archived		
Archived <rimmelleo@outlook.com></rimmelleo@outlook.com>	Rimmel leo <rimmelleo@outlook.com></rimmelleo@outlook.com>	"Fairbanks, Amber;[5]"	Fw: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 19:11:00 ED	2024 40.92.20.100	inbound	Indexed and archived	1	Aggressive
Rejected <mikeydphilips@gmail.com></mikeydphilips@gmail.com>	<maybear1420@gmail.com></maybear1420@gmail.com>	" <rob.delpriore@maac.com>"</rob.delpriore@maac.com>	Re: Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 18:57:26 ED	2024 209.85.128.194	inbound	Header Rejected	0	
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Bounced <<>>	<chris.roetker@maac.com></chris.roetker@maac.com>	" <no-reply@q4inc.com>"</no-reply@q4inc.com>	Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 18:34:40 ED Automatic reply; [EXTERNAL] Mid-America Apartment	2024 142.251.163.27	outbound	Hard Bounce	0	
Bounced <<>>	<lori.thibodeau@maac.com></lori.thibodeau@maac.com>	" <no-reply@q4inc.com>"</no-reply@q4inc.com>	Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 18:34:39 ED Automatic reply: [EXTERNAL] Mid-America Apartment	2024 172.253.122.27	outbound	Hard Bounce	0	
Bounced <<>>	<carol.walker@maac.com></carol.walker@maac.com>	" <no-reply@q4inc.com>"</no-reply@q4inc.com>	Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 18:34:38 ED Automatic reply: [EXTERNAL] Mid-America Apartment	2024 142.251.167.26	outbound	Hard Bounce	0	
Bounced <<>>	<ashlee.sanders@maac.com></ashlee.sanders@maac.com>	" <no-reply@q4inc.com>"</no-reply@q4inc.com>	Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 18:34:33 ED	2024 142.251.179.26	outbound	Hard Bounce	0	
Bounced <bounces+20277149-5207-jenni.wilson=maac.com@mail-sendgrid.q4inc.com></bounces+20277149-5207-jenni.wilson=maac.com@mail-sendgrid.q4inc.com>	<no-reply@q4inc.com></no-reply@q4inc.com>	" <jenni.wilson@maac.com>"</jenni.wilson@maac.com>	[EXTERNAL] Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton Mon Oct 14 18:34:24 ED	2024 52.101.42.16	inbound	Hard Bounce	1	

# Case 2:23-cv-02186-SHL-cgc Document 130-2 Filed 01/17/25 Page 2 of 3 PageID 2260

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Held	<bounces+20277149-3dea-tanner.harris=maac.com@mail-sendgrid.q4inc.com></bounces+20277149-3dea-tanner.harris=maac.com@mail-sendgrid.q4inc.com>	<no-reply@q4inc.com></no-reply@q4inc.com>	" <tanner.harris@maac.com>"</tanner.harris@maac.com>	Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton	Mon Oct 14 18:34:24 EDT 2024	168.245.55.252	inbound	Message Hold Applied - Spam Signature policy 1	Aggressive
Held	<bounces+20277149-ffcf-stephanie.voigt=maac.com@mail-sendgrid.q4inc.com></bounces+20277149-ffcf-stephanie.voigt=maac.com@mail-sendgrid.q4inc.com>	<no-reply@q4inc.com></no-reply@q4inc.com>	" <stephanie.voigt@maac.com>"</stephanie.voigt@maac.com>	Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton	Mon Oct 14 18:34:23 EDT 2024	168.245.55.252	inbound	Message Hold Applied - Spam Signature policy 1	Aggressive
Held	<bounces+20277149-0f4d-stephanie.baine=maac.com@mail-sendgrid.q4inc.com></bounces+20277149-0f4d-stephanie.baine=maac.com@mail-sendgrid.q4inc.com>	<no-reply@q4inc.com></no-reply@q4inc.com>	" <stephanie.baine@maac.com>"</stephanie.baine@maac.com>	Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton	Mon Oct 14 18:34:23 EDT 2024	168.245.55.252	inbound	Message Hold Applied - Spam Signature policy 1	Aggressive
Held	<bounces+20277149-aa6b-rickey.fleming=maac.com@mail-sendgrid.q4inc.com></bounces+20277149-aa6b-rickey.fleming=maac.com@mail-sendgrid.q4inc.com>	<no-reply@q4inc.com></no-reply@q4inc.com>	" <rickey.fleming@maac.com>"</rickey.fleming@maac.com>	Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton	Mon Oct 14 18:34:23 EDT 2024	168.245.55.252	inbound	Message Hold Applied - Spam Signature policy 1	Aggressive
Held	<bounces+20277149-f0e3-ping.guo=maac.com@mail-sendgrid.q4inc.com></bounces+20277149-f0e3-ping.guo=maac.com@mail-sendgrid.q4inc.com>	<no-reply@q4inc.com></no-reply@q4inc.com>	" <ping.guo@maac.com>"</ping.guo@maac.com>	Mid-America Apartment Communities Inc - MAA Announces Minor Damage from Hurricanes Helene and Milton	Mon Oct 14 18:34:23 EDT 2024	168.245.55.252	inbound	Message Hold Applied - Spam Signature policy 1	Aggressive
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# Case 2:23-cv-02186-SHL-cgc Document 130-2 Filed 01/17/25 Page 3 of 3 PageID 2261

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Document 130-3 PageID 2262

# EXHIBIT 3

Case 2:23-cv-02186-SHL-cgc

Document 130-3 Filed 01/17/25 PageID 2263

From: avalonbay@myworkday.com Date: October 21, 2024 at 4:44:01 PM EDT To: "Blackman, Jay" <Jay.Blackman@maac.com> Subject: [EXTERNAL] Application Received

Thank you for applying! We have received your application and will be in touch with next steps.

Click here to view the notification details.

This email box is not monitored. Please do not reply to this message.



This email was intended for Jay.blackman@maac.com

Document 130-4 PageID 2264

# EXHIBIT 4



From: "Blackman, Jay" <Jay.Blackman@maac.com> Date: October 21, 2024 at 4:41:39 PM EDT To: "Melnick, Jackie" <Jackie.Melnick@maac.com> Subject: Is this weird?

I had these in my spam folder. I never signed up for anything involving the DOJ...

usdoj@public.govdelivery.com	Subscription Change Confirmation	2024- 10-21 14:57
usdoj@public.govdelivery.com	Welcome New User	2024- 10 <b>-21</b> 14:58
× Jay Blac Regional V 501 Hollar	/ice President	

501 Holland Lane Alexandria, VA 22314 P: 901-296-1100 www.maac.com

Case 2:23-cv-02186-SHL-cgc	
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Document 130-4 PageID 2266

Filed 01/17/25 Page 3 of 3

PageID 2267

# EXHIBIT 5

Case 2:23-cv-02186-SHL-cgc Document 130-5 Filed 01/17/25 PageID 2268

.7/25 Page 2 of 5

Comments Displaying 1 - 23 of 23 **Created**  Case 2:23-cv-02186-SHL-cgc

Document 130-5

Filed 01/17/25 Page 3 of 5

PageID 2269

Mon, 01/06/2025 - 17:01

# **Private Note**

Off

I am also sure, some of the board will receive this message. God bless. Created Mon, 01/06/2025 - 16:59

## **Private Note**

Off

Your actions in the court proceedings against me are nothing short of outrageous and reprehensible. The egregious misconduct and blatant manipulation of the legal system by your company and its representatives have crossed all bounds of ethical and legal standards. Here is a detailed account of the absurdities and flagrant violations orchestrated by MAA:

1. Blatant Subpoena Manipulation: It's appalling that subpoenas were shamelessly altered to include my known email addresses even before I was officially named a defendant. This is a clear and scandalous abuse of legal authority, aimed at personal harassment under a false legal pretext.

2. Direct Judicial Misconduct by Michael Kapellas: Michael Kapellas authored several court orders against me, blatantly overstepping his bounds. His past affiliation with Bass, Berry & amp; Sims, your legal counsel, reveals a disturbing conflict of interest that questions the integrity of the judicial process.

3. Laughable Expert Testimony: The expert testimony presented, based on VPN data, is an insult to judicial standards—completely flawed and misleading. It's an utter mockery of the evidence process, intended to manipulate facts rather than uncover truth.

4. Trademark Infringement Farce: Framing this as a trademark infringement case is laughably absurd. It's clear this was just a thinly veiled excuse to drag me through a mire of legal manipulation and baseless accusations. 5. Joe Fracchia's Cybersecurity Fiasco: Joe Fracchia's management of cybersecurity, characterized by the use of vulnerable VPNs and systems, not only questions his competence but also exposes the entire network to significant risks. How can someone in such a critical role display such gross negligence?

6. Thuggish Intimidation Tactics: Employing process servers to terrorize me at my home multiple times, particularly under the guise of legal procedure, is downright thuggish and designed to intimidate rather than serve justice.

7. Illegal Disclosure of Confidential Information: The audacious public release of my confidential whistleblower complaints in court filings is a reckless act that flagrantly violates federal confidentiality protections. This move was clearly intended to undermine my position and retaliate against me.

8. Procedural Farce and Judicial Overreach: The rapid and baseless escalation to severe sanctions, including threats of contempt and arrest without proper hearings, highlights a judicial overreach so severe it turns the court proceedings into a farce.

9. Abuse of Legal Loopholes and Manipulative Tactics: The strategic manipulation of legal processes, including the use of cameras during depositions to intimidate, is shameful and highlights a pattern of abuse that should concern any observer of the legal system.

10. Corrupted Legal Processes and Systematic Obstruction of Justice: The undeniable connections between MAA's legal team and judicial staff have not only polluted the legal process but turned what should have been a fair trial into a corporate-controlled puppet show. The deliberate deployment of altered subpoenas and manipulation of procedural rules further undermines my ability to defend myself and obstructs justice.

11. Violation of Ethical Standards in Legal Practice: The actions taken by MAA's counsel, especially in handling confidential information and engaging in unethical behavior during depositions, are severe breaches of legal ethics that demand accountability.

12. Criminal Conduct: The manipulation of legal instruments and possible fabrication of evidence might rise to the level of criminal fraud, warranting a serious investigation for obstruction of justice and harassment.

13. Antitrust and Accounting Malpractices: Your deep entanglements with public officials and the ability to influence judicial outcomes raise serious antitrust concerns, suggesting an unfair competitive edge. Moreover, the misclassification of expenses and the opaque subsidiary structure designed to obscure financial statements

#### suggest severe accounting malpractices that could attract SEC investigations.

14. IT Mismanagement: The so-called cybersecurity measures under Joe Fracchia's watch are nothing short of laughable. Entrusting someone with such critical responsibilities, who then proceeds to use vulnerable VPNs and compromised systems, not only questions his competence but also highlights the farcical nature of MAA's claims about robust IT security. How can a company, supposedly committed to protecting investor and tenant data, allow such glaring lapses in their IT leadership?

15. Need I go on?

These points are not merely concerns; they are a damning indictment of MAA's approach to legal proceedings and corporate governance. The absurdity of your actions necessitates a thorough and immediate internal review to address these severe lapses in judgment and ethics.

Sad to see Eric retiring—his remarkable ability to prioritize profits above all else, treat residents as mere revenue streams, and maintain unsustainable dividend payouts truly set him apart as a leader in maximizing shareholder returns at any cost. I believe I called that one as well. More to come.

#### Created

Mon, 01/06/2025 - 16:45

#### **Private Note**

#### Off

In addition to the extensive complaints I have submitted since April 2021, I am supplementing my prior submissions to provide further detail regarding conflicts of interest, corporate governance failures, and regulatory violations within Mid-America Apartment Communities, Inc. (MAA). This supplement reinforces my existing concerns and outlines critical findings that highlight the systemic nature of the company's ethical and regulatory breaches.

MAA's executives and legal representatives maintain troubling connections to influential public officials, which severely compromise transparency and accountability. Bill Gibbons, former Shelby County District Attorney General and President of the Memphis Shelby Crime Commission, has long-standing ties to the Memphis judicial and law enforcement community. His involvement in crime policy and public safety initiatives raises serious concerns about MAA's ability to leverage these relationships to deflect scrutiny and suppress whistleblower reports. The proximity of MAA's defense counsel and executive team to key judicial officers and staff within the Western District of Tennessee and the Sixth Circuit Court of Appeals creates an unacceptable overlap of influence and control. Staff attorneys and judicial clerks such as Raymond Simmons and Richard Osborne III play pivotal roles in reviewing pro se litigant communications and drafting orders. The fact that Judge Julia Smith Gibbons, a sitting Sixth Circuit judge, is married to Bill Gibbons, whose professional networks overlap with MAA's legal counsel at Bass, Berry & amp; Sims, exacerbates concerns about the impartiality of rulings affecting MAA-related matters. These judicial and corporate entanglements call into question whether MAA has co-opted the legal process to evade accountability.

Joe Fracchia, MAA's Executive Vice President and Chief Technology & amp; Innovation Officer, holds a CPA designation and serves as a board member of the Memphis Shelby Crime Commission. His concurrent roles place him at the intersection of corporate governance and public policy, presenting a significant conflict of interest. Despite holding a position ostensibly related to technology operations, Fracchia's CPA expertise suggests deeper involvement in governance, compliance, and financial matters outside the purview of his role. This placement appears to be an attempt to leverage financial credentials to bolster the company's appearance of oversight while diverting meaningful compliance responsibilities. The pattern of appointing CPAs to non-financial roles raises questions about whether these placements are designed to provide cover for governance failures and internal control issues rather than improve compliance.

The Memphis Shelby Crime Commission collaborates with judicial and law enforcement entities on crime initiatives and prosecutorial discretion in Memphis and Shelby County. MAA's executive participation in this Commission creates the appearance that public safety initiatives may be co-opted to serve the company's corporate strategy rather than promote impartial governance. MAA's real estate interests in Memphis overlap with public-private crime initiatives, warranting regulatory scrutiny to determine whether these programs are being leveraged to influence litigation or shield the company from scrutiny. The connections between MAA executives

#### Case 2:23-cv-02186-SHL-cgc Document 130-5 PageID 2271

# 0-5 Filed 01/17/25 Page 5 of 5

and public officials entrusted with judicial oversight undermine the integrity of legal processes and blur the line between corporate defense strategies and public governance.

MAA's governance failures extend beyond conflicts of interest and into its financial reporting practices. The company has failed to implement effective internal controls to ensure accurate and transparent financial disclosures. I provided specific examples where invoices were misclassified as casualty losses despite representing ordinary property expenses unrelated to any legitimate storm damage. These misclassifications distort financial reporting and mislead investors, raising serious concerns about MAA's compliance with SEC regulations under 17 C.F.R. § 240.13a-15, which require accurate and timely reporting of financial information. Additionally, MAA maintains an opaque subsidiary structure, particularly through entities acquired via Post Properties. This network of subsidiaries appears designed to obscure financial accountability and shield liabilities, complicating efforts to assess the company's true financial condition and increasing the risk of regulatory violations.

The whistleblower system at MAA is fundamentally ineffective and appears structured to insulate executives from scrutiny rather than facilitate independent investigations. Reports submitted through the hotline have not resulted in meaningful follow-up or transparency. In 2021, I was promised a detailed investigative report, which was never provided. Attempts to contact the Board of Directors directly were blocked by non-functional escalation email addresses, further reinforcing the perception that the system is a façade designed to protect management rather than promote accountability. The company's legal counsel, Bass, Berry & amp; Sims, has weaponized legal proceedings to suppress whistleblower reports through frivolous litigation and retaliatory actions. This includes a retaliatory \$600,000 judgment aimed at silencing my disclosures. These tactics reflect a deliberate effort to intimidate whistleblowers and undermine transparency, in direct violation of federal whistleblower protection laws, including provisions under the Sarbanes-Oxley Act and the Dodd-Frank Act.

MAA has also demonstrated a blatant disregard for whistleblower anonymity by disclosing confidential internal complaints in court filings, violating federal protections that mandate confidentiality to prevent retaliation. The disclosure of whistleblower reports exposes the company to significant legal liability and raises questions about its commitment to compliance and ethics. Additionally, MAA's use of altered subpoenas containing personal identifiers and the employment of process servers who engaged in deceptive practices reflect a strategy to weaponize legal procedures against whistleblowers. These actions undermine due process and expose the company to further legal consequences.

The findings I have documented illustrate systemic failures in corporate governance, transparency, and compliance with regulatory obligations. These failures expose MAA to substantial legal, financial, and reputational risks. This submission serves to supplement the record of my prior complaints and underscores the urgent need for regulatory scrutiny and independent oversight to address these pervasive governance issues. Sincerely,

**Dennis Philipson** 



Executive Vice President Chief Administrative Officer and General Counsel 6815 Poplar Ave., Ste. 500 <u>Germantown, TN</u> 38138



Dennis Philipson 6178 Castletown Way Alexandria, VA 22310 mikeydphilipson@gmail.com

January 27, 2025

Clerk of the Court U.S. District Court for the Western District of Tennessee 167 N. Main Street Room 242 Memphis, TN 38103

Re: Request to Attach Correspondence to the Docket Case Name: Mid-America Apartment Communities, Inc. v. John Doe 1 and John Doe 2 Case Number: 2:23-cv-02186-SHL-cgc

Dear Clerk of the Court,

I am writing to request that the enclosed email and document be added to the docket for the above-referenced case as correspondence. This submission pertains to ongoing concerns regarding unwanted communications from the opposing counsel, despite multiple requests to cease contact.

The attached materials serve to document these interactions for the record and provide context for my concerns. I respectfully ask that this correspondence be docketed accordingly.

If you have any questions or need additional information, please do not hesitate to contact me.

Thank you for your assistance.

Sincerely, Dennis Philipson

Enclosures:

• Email and Document for Docket Submission

1/27/25, 5:26 PM Case 2:23-cv-02186-SHGmagare: PDipodul PMAt Pballudgn Feiler Bage 2 of 13 Page ID 2273



Dee Philips <mikeydphilips@gmail.com>

# Re: Philipson - MAA Post Judgment Discovery Requests - Set One

Mon, Jan 27, 2025 at 5:16 PM

Dee Philips <mikeydphilips@gmail.com> Mon, Jan 27, 20 To: "Williams, Kris R." <Kris.Williams@bassberry.com> Cc: "Golwen, John S." <jgolwen@bassberry.com>, "Mills, Paige" <PMills@bassberry.com>, "Thomas, Jordan" <jordan.thomas@bassberry.com>

Kris,

This is the fourth time I've made this clear: upload the filing to the Sixth Circuit Court of Appeals docket. Do not email me.

Do not contact me via email again regarding this matter.

Dennis M. Philipson

On Mon, Jan 27, 2025, 5:13 PM Williams, Kris R. <Kris.Williams@bassberry.com> wrote:

Good Afternoon Mr. Philipson,

Attached please find Mid-America Apartment Communities, Inc.'s First Set of Post-Judgment Interrogatories and Request for Production of Documents Propounded to Defendant Dennis Michael Philipson, as they relate to the above matter. Thank You.

# BASS BERRY+SIMS

#### **Kris Williams**

Paralegal

Bass, Berry & Sims PLC The Tower at Peabody Place - 100 Peabody Place, Suite 1300 Memphis, TN 38103-3672 901-543-1630 phone Kris.Williams@bassberry.com • www.bassberry.com Document 131 Filed 01/28/25 Page 3 of 13 PageID 2274

# BASS BERRY I SIMS.

John S. Golwen jgolwen@bassberry.com +1 (901) 543-5903

January 27, 2025

Via Email and U.S. Mail Dennis Philipson 6178 Castletown Way Alexandria, VA 22310 mikeydphilips@gmail.com

# Re: *Mid-America Apartment Communities, Inc. v. John Doe 1 and John Doe 2* TN Western District Court / Case No. 2:23-cv-02186-SHL-cgc

Dear Mr. Philipson:

Enclosed is a copy of Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production of Documents Propounded to Defendant Dennis Michael Philipson in the above matter

If you have any additional questions or concerns, please feel free to contact our office.

Sincerely, Kris Williams Paralegal

/krw Enclosure

cc: Paige W. Mills, Esq. (via email only) John S. Golwen, Esq. (via email only) Jordan E. Thomas, Esq. (via email only)

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	) ) ) Docket No. 2:23-cv-02186-SHL-cgc
V.	)
DENNIS MICHAEL PHILIPSON,	)
Defendant.	

# PLAINTIFF'S FIRST SET OF POST-JUDGMENT INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO DEFENDANT DENNIS MICHAEL PHILIPSON

Pursuant to Rule 69 of the Federal Rules of Civil Procedure, Plaintiff hereby propounds their First Set of Post-Judgment Interrogatories and Requests for Production of Documents, (collectively, "Discovery Requests") to Defendant, Dennis Michael Philipson, ("Defendant"). These Discovery Requests are continuing and require supplemental responses to the extent provided by Rule 26(e) of the Federal Rules of Civil Procedure. Plaintiff requests Defendant serve on counsel for Plaintiff, within thirty days from the date of service, answers to the following First Set of Post-Judgment Interrogatories and the requested documents. The following instructions and definitions are applicable to all Discovery Requests herein.

# **INSTRUCTIONS FOR ANSWERING**

1. Please note that all answers are to be made separately and fully and that an incomplete or evasive answer is a failure to answer. When an interrogatory calls for an answer

#### Case 2:23-cv-02186-SHL-cgc Document 131 Filed 01/28/25 Page 5 of 13 PageID 2276

in more than one part, please separate the parts in your answer accordingly so that each part is clearly set out and understandable.

2. Where knowledge or information in your possession is requested, such request includes knowledge or information in possession of your representatives, agents, insurers, and, unless privileged, attorneys.

3. If you have only incomplete knowledge of the answer to an interrogatory, please answer to the extent of your knowledge and state specifically the portion or area of the interrogatory of which you have only incomplete knowledge, and identify the person or persons who do(es) have or might have additional knowledge or information to complete the answer.

4. If you answer any interrogatory in whole or in part by attaching a document containing information sufficient to do so, the relevant portions of such document must be marked or indexed.

5. "Document" means all paper and electronically stored information (including but not limited to all electronic databases and the data therein, all electronic messages and communications, all electronic word processing documents and spreadsheets, all electronically stored voice mail, and all data and information stored in any relevant PDA, smartphone, or mobile phone), originals, copies and drafts of all written, typewritten, recorded, transcribed, printed, taped, transmitted, photographic, or graphic matter, however produced or reproduced, whether sent or received, or neither, including but not limited to books, pamphlets, articles, newspapers, press releases, magazines, booklets, circulars, handbooks, manuals, periodicals, letters, memoranda, files, envelopes, notices, instructions, reports, financial statements, checks (cancelled or otherwise), check stubs, receipts, working papers, questionnaires, notes, notations, charts, lists, comparisons, telegrams, cables, communications, minutes, transcriptions,

#### Case 2:23-cv-02186-SHL-cgc Document 131 Filed 01/28/25 Page 6 of 13 PageID 2277

correspondence, agreements, graphs, tabulations, analyses, evaluations, projections, opinions or reports of consultants, statements, summaries, desk calendars, appointment books, telephone logs, telephone bills, surveys, indices, tapes, and all other material fixed in a tangible medium of whatever kind known to you and within your possession, custody, or control. Document also includes different versions of the same document, including but not limited to drafts or documents with handwritten notes or marks not found on the original or copies, which are different documents for you to identify in your response.

6. Where the identity of a person is requested, please state his or her full name, any known nicknames or alias, present or last known home address and telephone number, present or last known position and business affiliation or employment and the address and telephone number there, and his or her employment and position at the time in question. For persons whose addresses are known to be inaccurate at this time, please state the most reliable address and telephone number in your possession.

7. A request for documents shall include all documents that contain, evidence, reflect or relate to any information requested.

8. "Defendant" means "Dennis Michael Philipson". "You" or "Your" means "Dennis Michael Philipson".

9. Where the identity of an entity not a natural person is requested, please state the name of the entity, the person(s) employed by or otherwise affiliated with that entity who has knowledge of the matters covered in answer to the specific interrogatory, that person's job title, the address of the entity, and the telephone numbers of the person(s) identified as being employed or otherwise affiliated with the entity.

3

#### Case 2:23-cv-02186-SHL-cgc Document 131 Filed 01/28/25 Page 7 of 13 PageID 2278

10. "Communication" shall mean any exchange, transmission or receipt (whether as listener, addressee, person called or otherwise) of information, whether such exchange, transmission or receipt be oral, written or otherwise, and includes, without limitation, any meeting, conversation, telephone call, letter, telegram, email, facsimile, exchange, transmission or receipt of any document of any kind whatsoever.

11. "Relate" means containing, alluding to, responding to, connected with, regarding, discussing, involving, showing, describing, analyzing, reflecting, identifying, incorporating, referring to, or in any way pertaining to.

12. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively or disjunctively, as appropriate, so as not to exclude any documents or information otherwise within the scope of these requests.

14. Where the identity of a document is requested, please state the nature or title of the document, the date of the document, all persons believed to have knowledge of the contents of the document, in whose possession the document presently is, and, regarding a document which was, but is no longer in your possession, custody or control, and the contents of the document. If the document identified was, but is no longer in the possession of Defendant or subject to Defendant's control, or it is no longer in existence, state whether it is (a) missing or lost, (b) destroyed, (c) transmitted or transferred voluntarily or involuntarily to others, identifying such others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition and state the date or approximate date thereof. If any of the above information is not available to Defendant, state any available means of identifying such document.

#### Case 2:23-cv-02186-SHL-cgc Document 131 Filed 01/28/25 Page 8 of 13 PageID 2279

15. Where a statement or description is requested, please include a specific account of what is being stated or described including, where applicable, without limitation, the date or time period involved; the identity of persons from whom the information was learned, who would have knowledge of what information, and/or who participated or was present; what happened in chronological order relating to each identifiable event, response, act or other thing; the address and, if known, ownership and use, where the occurrence took place; the context or circumstances in which the occurrence took place; and what response or reaction existed that caused the occurrence to take place.

16. For each interrogatory, please identify the persons from whom the information contained in the answer is obtained and the persons who swear to the truth of that information.

17. Please note that, pursuant to Rule 26(e), you are under a continuing duty to supplement your responses.

18. If you withhold any responsive information on the grounds that it is privileged or otherwise excludable from discovery, identify the information, describe its subject matter and specify the basis for the claimed privilege or other grounds of exclusion.

#### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Describe in detail all of your sources of income or compensation, whether or not reported on any tax return, and, as to all income and assets or services received, set forth the income, assets or services received, the nature and amount of any deductions or set-offs, and the net amount received.

#### **ANSWER:**

**INTERROGATORY NO. 2:** Please identify all of your checking, savings, money market or other accounts, certificates of deposit, or mutual funds with any financial or banking institution, including savings and loan associations, stock brokerage firms, or credit unions, by providing the following information for each:

- a) name and address of financial institution;
- b) type of account;
- c) name of account;
- d) account number;
- e) current balance;
- f) average balance from statements for each of the last twelve months; and
- g) name, address, and relationship of any other person or entity having an interest in each account, and the nature or extent of their interest.

#### ANSWER:

**INTERROGATORY NO. 3:** For each parcel of real property in which you have had an ownership or leasehold interest during the past five years, please provide the following information:

a) the address and legal description of the property;

b) the size of the property;

c) a description of each structure and other improvement on the property;

d) the name and address of any other person or corporation having an ownership interest in each parcel and the type of ownership interest held;

e) the ownership of the property as stated in the documents of title, and the location of each document;

f) the present value of your equity interest in the property;

g) whether you lease or rent the property and how much income you derive per year from renting or leasing the property; and

h) whether you claim that the property is exempt by law from forced sale.

#### **ANSWER:**

**INTERROGATORY NO. 4:** State the cost, location and estimated present market value of all motorized vehicles, watercraft, jewelry, and artwork that you own. Please set forth, with respect to each item of personal property described, whether the article of personal property is the subject of any lien or security interest and the balance of the loan secured by any such lien or security interest.

#### ANSWER:

**INTERROGATORY NO. 5:** Please identify any Trust Account, of which you are a beneficiary, by providing the following information:

- a) the name of the trust;
- b) the name of the trustee;
- c) the type of trust;
- d) current balance;
- e) name, address, and relationship of any other person or entity having an interest in each trust, and the nature or extent of their interest.

## **REQUESTS FOR PRODUCTION**

**<u>REQUEST NO. 1:</u>** Produce all documents referenced in the preceding answers to interrogatories.

#### **RESPONSE:**

**REQUEST NO. 2:** Produce copies of certificates of title evidencing your ownership in any property.

#### **RESPONSE:**

**REQUEST NO. 3:** Produce all of your federal and state tax returns for each year from 2013 through 2023.

#### **RESPONSE:**

Case 2:23-cv-02186-SHL-cgc Document 131 Filed 01/28/25 Page 12 of 13 PageID 2283

**REQUEST NO. 4:** Produce all of the your financial and bank statements and cancelled checks for the past five years for any accounts, certificates, and funds identified in response to Interrogatory No. 2.

#### **RESPONSE:**

Respectfully Submitted,

/s/ John Golwen

John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com jordan.thomas@bassberry.com

Paige Waldrop Mills, BPR. No. 016218 BASS, BERRY & SIMS PLC 21 Platform Way South, Suite 3500 Nashville, TN 37203 Tel: (615) 742-6200 pmills@bassberry.com

Counsel for Mid-America Apartment Communities, LLC Case 2:23-cv-02186-SHL-cgc

Document 131 PageID 2284

#### **CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2025 the forgoing was served on the individual below by electronic mail and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310 mikeydphillips@gmail.com

/s/ John Golwen

John Golwen

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT	)
COMMUNITIES, INC.,	)
Plaintiff,	)
v.	)
	)
DENNIS MICHAEL PHILIPSON,	)
Defendant.	)

No. 2:23-cv-2186-SHL-cgc

# **COVER PAGE – REQUEST FOR DOCKET FILING**

To the Clerk of Court:

I respectfully request that the attached Notice of Cease and Desist to Opposing Counsel and

Record of Harassment be entered onto the docket in the above-captioned case for documentation purposes.

I fully acknowledge that this case is closed and currently on appeal under Case No. 24-6082; however, given the ongoing post-judgment legal maneuvers, excessive legal mailings, and continued intimidation tactics, I am submitting this document to preserve a complete and accurate record of these issues.

Respectfully submitted,

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant, Pro Se 6178 Castletown Way Alexandria, VA 22310 MikeyDPhilips@gmail.com

Case	2:23-	cv-02	186-S⊦	IL-cgc
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Document 132 Filed 02/03/25

#### PageID 2286

#### **UNITED STATES COURT OF APPEALS** FOR THE SIXTH CIRCUIT 24-6082

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NOTICE OF CEASE AND DESIST TO OPPOSING COUNSEL AND RECORD OF HARASSSMENT **OF MOTIONS & NOTIFICATION** (February 3, 2025)

I respectfully request that this Notice of Cease and Desist to Opposing Counsel and Record of Harassment be entered onto the official docket in this case. This filing serves to document the ongoing harassment, intimidation, and improper legal tactics by Mid-America Apartment Communities, Inc. (MAA) and its legal representatives at Bass, Berry & Sims PLC and to place the Court on notice of continued violations of federal law, civil procedure, and whistleblower protections.

From what I recall, in 2021, I ceased all communication with MAA. In April 2021, I reported concerns via email regarding various matters related to the company and was blocked from communicating further with the company. At that time, I had no further intention of pursuing additional action and was allowing my EEOC complaint, SEC complaint, and IRS complaint to run their course.

It was not until September 2021, when MAA's Senior Vice President of Internal Audit, Glenn Russell, contacted me, that I reopened my investigation into the company. Glenn Russell falsely stated that a report would be provided to me once the "format was correct" for submission to the board; however, this never occurred. Furthermore, MAA provides no direct means of communication with the board, as all correspondence is routed through the corporate office, further obstructing transparency and accountability.

Prior to this, I had given up on contacting MAA. However, their direct outreach and misrepresentations led me to reassess the extent of potential misconduct and pursue further whistleblower actions. Despite this, it remains my legal right to continue documenting my concerns through the SEC-mandated whistleblower hotline, as permitted under Sarbanes-Oxley and Dodd-Frank protections. MAA's choice not to contact the SEC and DOJ directly to address these concerns is entirely their own decision, and I am under no obligation to cease my filings.

In April 2023, MAA and its legal representatives initiated a lawsuit against me, alleging trademark infringement, and have since persistently engaged in:

Harassing me through excessive and unwarranted legal mailings (See Exhibit A – Excessive Mailings).

- Deploying deceptive process service tactics designed to intimidate and retaliate against me (See Exhibit C – Agent Barber Server Photos).
- Failing to acknowledge my prior whistleblower complaints while continuing retaliatory actions (See Exhibit B – 2021 Whistleblower Complaints).

These actions are in clear violation of whistleblower protections, federal law, and professional ethical obligations governing attorneys practicing before this Court.

Page 3 of 8

# NOTICE OF CEASE AND DESIST TO OPPOSING COUNSEL AND RECORD OF HARASSMENT

To: Bass, Berry & Sims PLC Paige Waldrop Mills, BPR No. 016218 John Golwen, BPR No. 014324 Jordan Thomas, BPR No. 039531 150 3rd Avenue South, Suite 2800 Nashville, Tennessee 37201

Cc: Mid-America Apartment Communities, Inc.

6815 Poplar Avenue Germantown, TN 38138 From: Dennis Michael Philipson 6178 Castletown Way Alexandria, VA 22310 MikeyDPhilips@gmail.com

February 3<sup>rd</sup>, 2025

This formal notice is to advise Bass, Berry & Sims PLC and Mid-America Apartment Communities, Inc. that all further direct communication with me must cease immediately, including email, mail, or any other form of contact, outside of officially docketed court filings in the Sixth Circuit Court of Appeals (Case No. 24-6082). Any further unwarranted or extrajudicial communication will be regarded as harassment and addressed accordingly.

The continued unjustified legal mailings, deceptive service of process, and other coercive tactics used by your firm violate multiple federal and state laws, including protections for litigants, whistleblowers, and individuals facing retaliation. These actions also infringe upon legal ethics standards governing attorneys and their obligations under federal law.

The pattern of harassment and intimidation employed by opposing counsel, including repeated and excessive legal threats, misuse of process servers impersonating law enforcement, and direct contact with my residence, raises serious legal concerns under federal statutes, including:

- The Sarbanes-Oxley Act (18 U.S.C. § 1514A) and Dodd-Frank Act (15 U.S.C. § 78u-6), which
  prohibit retaliation against whistleblowers who report securities violations and financial
  misconduct.
- The Clayton Act and Sherman Act (15 U.S.C. §§ 1–7, 12–27), which prohibit antitrust retaliation against individuals who report anti-competitive behavior.
- 18 U.S.C. § 1503, which prohibits obstruction of justice and improper influence over legal proceedings, including the use of intimidation tactics disguised as legitimate legal actions.
- 18 U.S.C. § 876, which criminalizes harassment and intimidation via the United States Postal Service (USPS), including excessive and abusive mailings intended to coerce or distress the recipient.
- 26 U.S.C. § 7623, which provides protections for individuals who file IRS whistleblower complaints and prohibits retaliatory measures against those who report financial misconduct.

I have already reported the \$600,000+ judgment mailing to the United States Postal Inspection Service (USPIS) and have handed over the envelope and its contents to their investigators for review. The continued use of mailings as a means of legal intimidation will remain under USPS scrutiny.

Additionally, your attempts to obtain detailed financial information through "Post-Judgment Interrogatories" (Docket #23, Exhibit D) are highly concerning, especially given that this matter is actively under appeal. This document was also mailed to me on June 27th, and I received a copy of it today. The use of these interrogatories, in light of the misconduct and intimidation tactics that have persisted throughout this case, appears to be yet another effort to exert undue pressure and further the pattern of harassment and retaliation I have already documented. Given the history of this litigation and the ongoing appeal, this action raises serious concerns regarding its intent and propriety and only serves to reinforce the broader pattern of abusive legal tactics and coercion.

I have also submitted this matter to the U.S. Department of Justice (DOJ) for review and have provided a copy to the U.S. Postal Inspection Service (USPIS) for further investigation, given the continued misuse of legal and mailing processes as tools of harassment and intimidation.

The escalating nature of these tactics has already required me to seek oversight and intervention from multiple regulatory and government agencies, and I will continue to contact any appropriate government authority necessary to report my concerns regarding this entire case. If warranted, I will:

- Continue to report these actions to the appropriate government agencies, including the Department of Justice (DOJ), the Securities and Exchange Commission (SEC), the Internal Revenue Service (IRS), and the U.S. Postal Inspection Service (USPIS), all of which have jurisdiction over the violations outlined above.
- File complaints with the Tennessee Bar Association regarding legal ethics violations and improper litigation conduct by opposing counsel.
- File police reports to document ongoing harassment, intimidation, or unlawful surveillance.
- Seek a restraining order against any individuals or entities engaging in persistent or escalating misconduct that threatens my privacy or security.

Furthermore, I must remind you that I previously requested regulated communication through the Court under Docket #5, seeking to establish clear boundaries regarding interactions in this matter. Despite this, you have continued to engage in extrajudicial communication and harassing tactics, further demonstrating the need for formal court oversight of all correspondence.

Filed 02/03/25 Page 7 of 9

Page 6 of 8

# Dated this 3rd day of February 2025

Respectfully submitted, /s/ Dennis Michael Philipson

Durc

**Dennis Michael Philipson** Defendant - Appellant, Pro Se MikeyDPhilips@gmail.com 6178 Castletown Way Alexandria, VA 22310

Filed 02/03/25 Page 8 of 9

Page 7 of 8

# **CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of January 2025, a true and correct copy of the foregoing NOTICE OF CEASE AND DESIST TO OPPOSING COUNSEL AND RECORD OF HARASSMENT was served via PACER, depending on the court timely upload and via USPS mail on the following counsel of record:

Counsel for Plaintiff:

Bass, Berry & Sims PLC Paige Waldrop Mills, BPR No. 016218 Bass, Berry & Sims PLC 21 Platform Way South, Suite 3500 Nashville, Tennessee 37203 Tel: (615) 742-6200

John Golwen, BPR No. 014324 Jordan Thomas, BPR No. 039531 Bass, Berry & Sims PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 Counsel for Mid-America Apartment Communities, LLC

16

/s/ Dennis Michael Philipson **Dennis Michael Philipson** Defendant, Pro Se

Filed 02/03/25 Page 9 of 9

Page **8** of **8** 

Case 2:23-cv-02186-SHL-cgc

Document 132-1 PageID 2294

**Exhibit A** 



Document 132-1 Filed 02/03/25 Page 2 of 16 PageID 2295

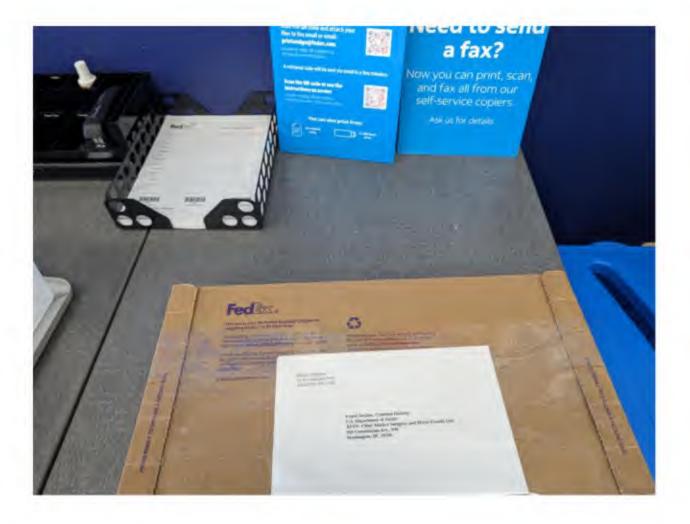


Document 132-1 Filed 02/03/25 Page 3 of 16 PageID 2296



Document 132-1 I PageID 2297

Filed 02/03/25 Page 4 of 16



Document 132-1 Filed 02/03/25 Page 5 of 16 PageID 2298



Document 132-1 Filed 02/03/25 Page 6 of 16 PageID 2299



Document 132-1 PageID 2300

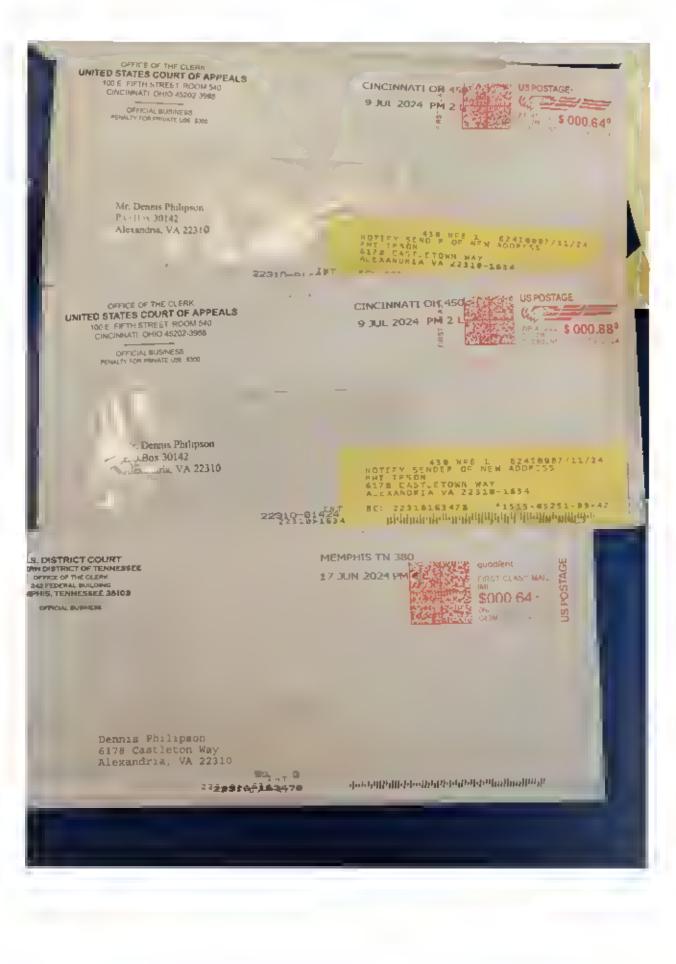
Filed 02/03/25 Page 7 of 16



## Document 132-1 Filed 02/03/25

Page 8 of 16

PageID 2301



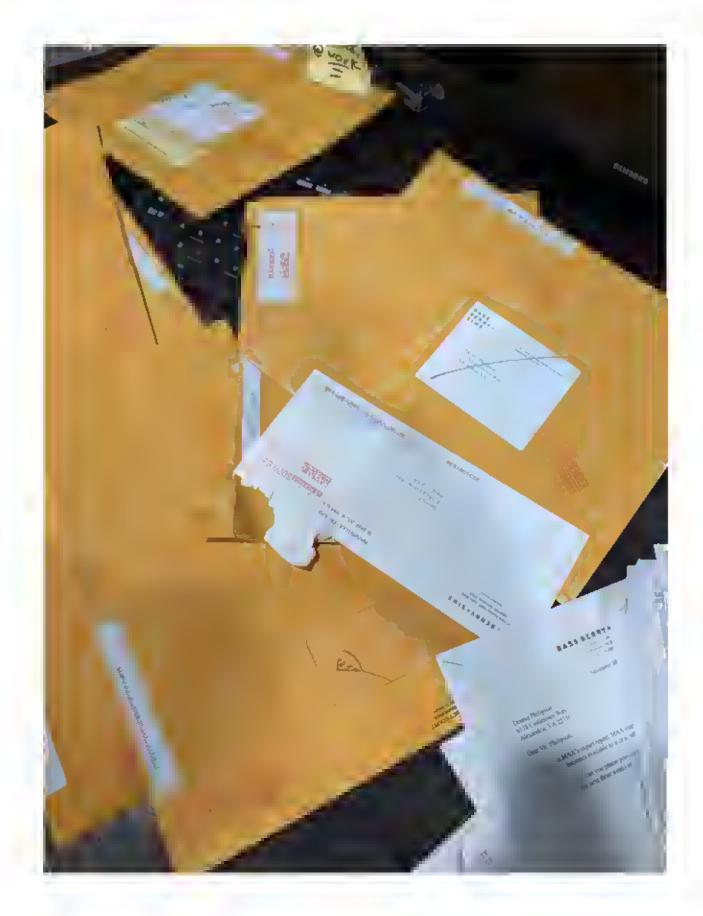


Document 132-1 PageID 2302

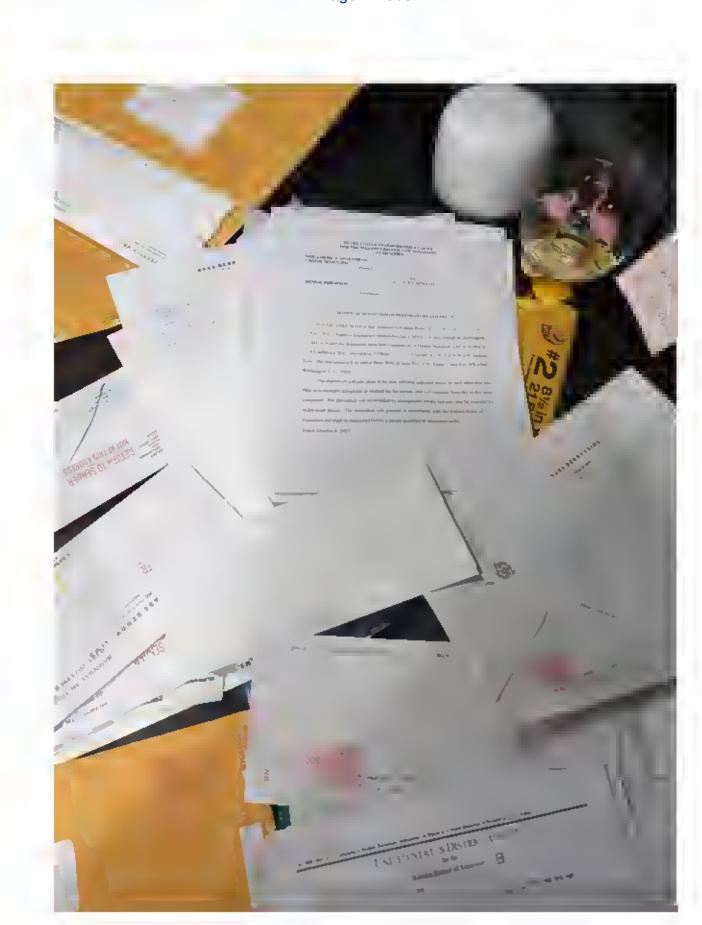


Document 132-1 PageID 2303 Filed 02/03/25 Page 10 of 16





Document 132-1 File PageID 2305



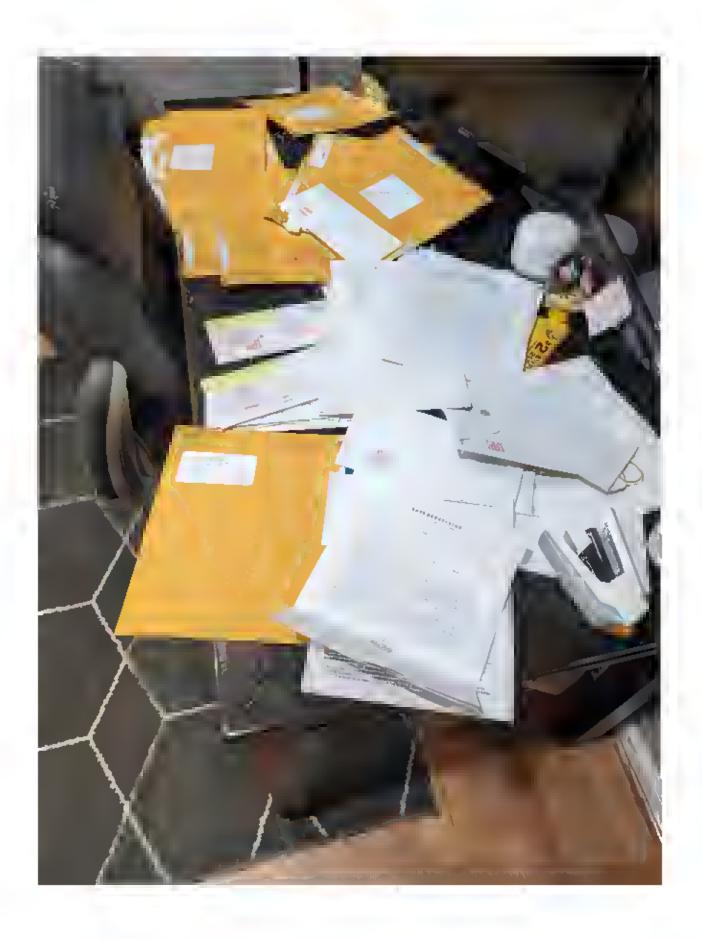
Document 132-1 Filed 02/03/25 Page 13 of 16 PageID 2306



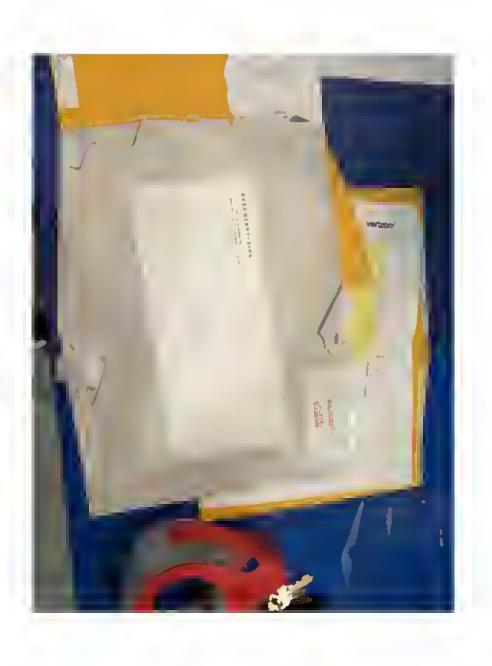
Document 132-1 Filed 02/03/25 Page 14 of 16 PageID 2307



Document 132-1 PageID 2308 Filed 02/03/25







Document 132-2 Filed 02/03/25 Page 1 of 5 PageID 2310

## Exhibit C



Case 2:23-cv-02186-SHL-cgc Document 132-2 Filed 02/03/25 Page 2 of 5 PageID 2311

01-03-24 - Agent Barber Car 2.mp4	11/24/2024	1/3/2024
01-03-24 - Agent Barber Car.mp4	11/24/2024	1/3/2024
01-03-24 - Agent Barber Flashing Lights.mp4	11/24/2024	1/3/2024
01-03-24 - Agent Barber in Backyard.mp4	11/24/2024	1/3/2024
01-03-24 - Agent Barber.mp4	11/24/2024	1/3/2024
12-14-23 - Agent Barber Car.mp4	11/24/2024	12/14/2023
12-14-23 - Agent Barber Door.mp4	11/24/2024	12/14/2023
01-07-24 - Barber Card.pdf	11/24/2024	1/7/2024
# 01-07-24 - Barber Pic.pdf	11/24/2024	1/7/2024
* 01-07-24 - Barber Subpueona.pdf	11/24/2024	1/7/2024

## Videos available on request.

Document 132-2 Filed 02/03/25 Page 3 of 5 PageID 2312

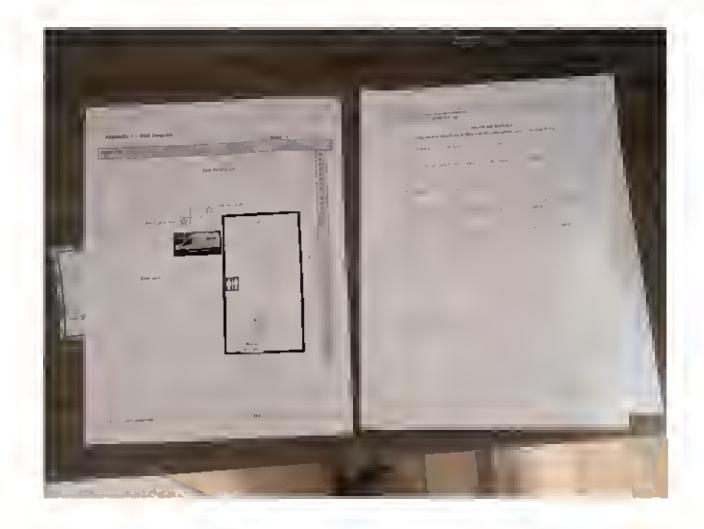


#### Document 132-2 Filed 02/03/25 PageID 2313

25 Page 4 of 5

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Case 2:23-cv-02186-SHL-cgc Document 132-2 Filed 02/03/25 Page 5 of 5 PageID 2314



Document 134 Filed 02/0 PageID 2316

# **Exhibit B**

02-03-2025 - Whistleblower Complaint Deleted From SEC MANDATED SYSTEM	2
04-06-2021 - Whistleblower Complaint - Accounting Practices & Racial Bias	3
09-17-2021 - Whistleblower Complaint - Harassment	14
09-20-2021 - Whistleblower - Inaccurate Coding	18







## Message Summary

Subject Accounting Practices/Racial Bias

**Type** Secure Web Form

**Documents** None

**Created** Tue, 04/06/2021 - 07:08

## **Original Message**

Good morning,

I am just mentioning what I heard, all this should be looked into for accuracy. First, I do not know if this is against policy, but it just does not seem right to me. I planned on bringing this up on the SVP visit, but seemed like they were on a tight schedule. In March 2021, I received a call from Jay Blackman asking how much I paid in pool expenses for 2020. I then was asked to compare it to Post Corners in Centreville's 2020 expenses. We found that Post Corners in Centreville had underpaid her 2020 by \$15,000. Now my response would be to let accounting know immediately and pay the bill for 2020 for \$15,000. From what I heard and I am not positive if this is accurate, the pool company was told that they need to work with Jay or else they would lose the contract. Jay seemed to blame Winkler for his lack of attention to detail and being able to catch this in 2020. Jay also said some pretty nasty things about Winkler and I know for a fact they are good at collecting money. From what I heard the \$15,000 is being paid in 2021, for services rendered in 2020 and split into payments. I also heard that some of this \$15,000 is being hidden in capital money by inflating some of the work that has actually been done. It is my understanding that regular life guard service is not a capital expense. Now, I do not know if this is against policy or just creative accounting. Also, I know there was another \$40,000 of bills that added up from another contractor at the same property earlier in 2020 Hopefully that all got accounted for correctly.

Secondly, I am tired of hearing Jay's borderline racist comments. He compares every black candidate we have interviewed to either ex employee Addi or Ronald from Post Pentagon Row. Most recently interviewed two black candidates, and his comment to me was "Oh, she was not like Addi at all." I do not understand how comparing her to someone that left the company two

2/3/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc WDate bowent White blow Files 02/02/25, Page 5 of 22 years ago is relevant. To me, I took that as, she is not black or ghetto" like Addi. I am sorry, I look at everyone as an individual and to not bunch people into one group. I could go on about other situations, but it is not my place.

## Comments

Displaying 1 - 12 of 12

**Created** Mon, 07/08/2024 - 20:33

------Forwarded message ------From: May Date: Mon, Jul 8, 2024 at 8:30 PM Subject: Philipson - 2:23-cv-02186 - Request for Update on Final Judgment and Scheduling Post-Judgment Meeting To: , , , Cc: jgolwen@bassberry.com , , May ,

Dear Judge Lipman and Judge Claxton,

I am writing to request an update on the issuance of the final judgment in my case, which I had previously asked to be finalized by June 24th. I note with concern that this action has not yet been taken. In accordance with Tennessee Code Annotated § 16-3-804, which mandates the expeditious handling of judicial matters to avoid undue delay, I urge the court to act swiftly in resolving this case. The prompt administration of justice not only benefits the parties involved but also upholds the integrity of the judicial process.

Despite my clear request for the conclusion of this case, it appears that Ms. Mills continues to initiate additional work and further allegations. This ongoing activity is not only prolonging the proceedings unnecessarily but also increasing the associated costs significantly, which seems contrary to the efficient management of litigation as prescribed by Rule 1 of the Tennessee Rules of Civil Procedure, emphasizing the just, speedy, and inexpensive determination of every action.

Moreover, once the final judgment is issued, I would appreciate the opportunity to schedule an in-person meeting with both of you in Tennessee. The abrupt cancellation of the anticipated trial necessitates a discussion to address any outstanding matters and to ensure a comprehensive understanding of the judgment's implications. Given the abrupt cancellation of the anticipated trial, I would like to confirm the meeting details over the phone before making travel arrangements.

I trust that this matter will be attended to with the urgency it warrants, and I look forward to your prompt response.

Thank you for your attention to this pressing issue.

Sincerely,

**Dennis Philipson** 

#### Created

Mon, 07/08/2024 - 19:57

Still waiting for the judgment please:

I write to you with profound disappointment regarding the conduct of your outside counsel and the broader ethical framework within MAA. It has become increasingly clear that your actions, particularly in handling whistleblower complaints, lack not only professional integrity but also legal compliance. These concerns are not merely observations but are rooted in significant breaches of legislative mandates and ethical norms.

Your decision to publicly disclose and misrepresent whistleblower complaints in the civil suit docket flagrantly violates the confidentiality protections under Section 806 of the Sarbanes-Oxley Act (SOX), codified at 18 U.S.C. § 1514A. This statute is designed to protect whistleblowers from retaliation, maintaining their anonymity to safeguard them from backlash. Moreover, these disclosures may also infringe upon Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. §§ 78u-6(h)), which further emphasizes whistleblower anonymity and provides monetary incentives for disclosures leading to successful enforcement actions. Ignoring these protections undermines the legislative intent and exposes your company to significant legal and reputational risks.

Equally troubling is the potentially defamatory nature of labeling these complaints as unfounded in public filings—a serious infringement of both Tennessee and Georgia state defamation laws. Under Tennessee Code Annotated § 29-20-205 and Georgia Code § 51-5-1, individuals are protected from false and damaging public statements that can harm their reputation. Such reckless behavior not only demonstrates a blatant disregard for these statutory protections but also exposes your company to defamation lawsuits within these jurisdictions, with potential demands for compensatory and punitive damages.

My statements regarding your company weremade in good faith. Despite my repeated requests for reports and clear answers to ensure that my concerns were addressed appropriately, I have been consistently ignored. Perhaps Mr. Glenn Russell is still working on the proper format for the report.

Instead, I find myself the target of a frivolous lawsuit, which clearly illustrates the problematic practices within your organization. It is noteworthy that the majority of the subsidiaries that remain are those established in the state of Georgia by Post Properties, perhaps because they were legally started or due to your legal entanglements in Atlanta. This downsizing of subsidiaries coincides suspiciously with the implementation of the Corporate Transparency Act, suggesting a strategic reduction in corporate structure just in time to meet new regulatory demands. This alignment raises serious questions about the transparency and legality of your corporate governance as you enact your succession plan and develop your executives.

The handling of sensitive information within these disclosures suggests a disregard for the Federal Rules of Civil Procedure, specifically Rules 26 and 31, which govern the discovery process to ensure that disclosure of sensitive information does not cause 2/3/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc whice how fitted 02/02/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc whice how fitted 02/02/02/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc which have fitted 02/02/02/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc which have fitted 02/02/02/02/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc which have fitted 02/02/02/25, 3:07 PM Case 2:23-cv-02/02/25, 3:07 PM Case

Furthermore, the operation of your whistleblower hotline appears to be a facade. Despite providing concrete evidence of fraud involving a maintenance supervisor and a contractor within your "insurance program," no corrective action has been taken. This inaction, coupled with the rehiring of a witness from my EEOC complaint, illustrates a flagrant disregard for ethical standards and suggests systemic corruption within your operations.

I also regret to see that Mr. Golwen and Ms. Thomas have been entangled in your unethical practices, with Ms. Mills emerging as a particularly egregious offender. This situation demands not just acknowledgment but immediate corrective measures.

Your company's failure to address these issues appropriately not only undermines legal standards but also erodes the essential trust and integrity necessary for sustainable corporate governance and investor confidence. Corrective action is not optional but a legal and ethical imperative.

#### Created

Sun, 07/07/2024 - 16:46

To reiterate, the prior professional relationship between Mr. Michael Kapellas and Attorney John Golwen, now representing an opposing party, creates an undeniable and blatant conflict of interest that irrevocably taints this entire proceeding. This conflict not only violates the Tennessee Rules of Professional Conduct, but also calls into question the integrity of the Tennessee judiciary.

Tennessee Rules of Professional Conduct:

Rule 1.9(a) of the Tennessee Rules of Professional Conduct is unequivocal in its prohibition against a lawyer representing a client in a matter substantially related to a former representation where the interests of the current client are materially adverse to those of the former client. Mr. Golwen's representation of a party adverse to Mr. Kapellas clearly violates this fundamental ethical principle.

Further exacerbating this conflict, Rule 1.10(a) imputes Mr. Golwen's conflict to his entire firm, potentially disqualifying the entire firm from this litigation and raising serious concerns about the validity of any actions they have taken in this case.

Tennessee Supreme Court Rules and State Law:

Rule 10B of the Tennessee Supreme Court Rules, along with Title 29, Chapter 3, Part 3 of the Tennessee Code Annotated, provide additional and compelling reasons for Mr. Kapellas to recuse himself. The mere appearance of bias, let alone an actual conflict of interest, is sufficient grounds for recusal under Tennessee law.

The addition of Mr. Randolph Noel by MAA as a top legal representative to draft a declaration further complicates the ethical landscape by introducing a power dynamic that could be used to unduly influence or intimidate. This action could be critiqued under

2/3/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc Wb@@b@@mtwliateblowFitade 02/02/26 Page 8 of 22 Federal Rule of Civil Procedure, Rule 11, Which sanctions attorneys for presenting to the court arguments that are not warranted by existing law or that are made for any improper purpose, such as to harass or to cause unnecessary delay.

#### **Documents**

Miller v. Autozone, Inc., 2020 U.S. Dist. LEXIS 206813 (1).pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07- 07/Miller%20v.%20Autozone%2C%20Inc.%2C%202020%20U.S.%20Dist.%20LEXIS%20206813%2 0%281%29_0.pdf?language=en)	379.75 KB
7-6-24 - Email to Attorney Noel.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-07/7-6-24%20- %20Email%20to%20Attorney%20Noel_0.pdf?language=en)	1.46 MB
Results list for_Golwen Kapellas.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07- 07/Results%20list%20for_Golwen%20Kapellas_0.pdf?language=en)	497 KB
12-10-23 - Michael Kapellas - LinkedIn - Judicial Law Clerk.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-07/12-10-23%20-%20Michael%20Kapellas%20- %20LinkedIn%20-%20Judicial%20Law%20Clerk.pdf?language=en)	2.63 MB
	<pre>(https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07- 07/Miller%20v.%20Autozone%2C%20Inc.%2C%202020%20U.S.%20Dist.%20LEXIS%20206813%2 0%281%29_0.pdf?language=en) 7-6-24 - Email to Attorney Noel.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07-07/7-6-24%20- %20Email%20to%20Attorney%20Noel_0.pdf?language=en) Results list for_Golwen Kapellas.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2024-07- 07/Results%20list%20for_Golwen%20Kapellas_0.pdf?language=en) 12-10-23 - Michael Kapellas - LinkedIn - Judicial Law Clerk.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblowerservices.com/maa/system/files- encrypted/whistleblowerservices.com/maa/system/files- encrypted/whistleblowerservices.com/maa/system/files-</pre>

#### Created

Sun, 07/07/2024 - 16:08

The involvement of Judicial Law Clerk Michael Kapellas, formerly employed by Bass, Berry & amp; Sims PLC, in proceedings where he has issued several orders against the concerned party, raises grave ethical concerns. This complex scenario mandates a rigorous examination under the applicable professional conduct rules, ethical standards, case law, and local court rules to preserve the integrity and impartiality of the judicial process.

Legal Framework and Ethical Standards

1. Rule 1.12 of the ABA Model Rules of Professional Conduct:

• Text of the Rule: Rule 1.12(a) mandates that a lawyer should not participate in any matter where they previously engaged personally and substantially while serving as a judge, adjudicative officer, or law clerk unless all parties involved give informed consent, confirmed in writing.

• Application to Mr. Kapellas: Michael Kapellas' career path is crucial for assessing the application of Rule 1.12(a). His professional timeline includes:

o 2014-2015: Judicial Law Clerk in the Western Tennessee District.

o 2015-2020: Associate at Bass, Berry & amp; Sims PLC.

o 2020-Present: Returned to a Judicial Law Clerk role in the Western Tennessee District.

These transitions highlight conflicts of interest:

o Public to Private and Back to Public: Mr. Kapellas' shift from a public judicial role to private practice, and his return to the judiciary raises significant concerns under Rule 1.12(a), especially since he was part of a firm now representing an opposing party. o Direct Involvement in Litigation: His direct involvement with attorneys from Bass, Berry & amp; Sims PLC, and his subsequent role in issuing orders against parties represented by his former employer critically undermines his perceived impartiality.

2/3/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc With a blow File and Market Page 9 of 22

o Necessity for Informed Consent: The comprehensive nature of Mr. Kapellas' professional engagements across both public and private sectors accentuates the paramount need for informed consent from all parties involved in the litigation. This requirement is substantiated by Rule 1.12 of the ABA Model Rules of Professional Conduct, which mandates that former judges, arbitrators, mediators, or law clerks must obtain informed consent from all parties before participating in matters where they had a prior involvement.

I Furthermore, Title 28 of the United States Code, Section 455, which deals with the disqualification of judges, justices, and magistrates, underscores the importance of avoiding the appearance of bias. It requires judges to recuse themselves from any proceedings in which their impartiality might reasonably be questioned. This legal mandate extends to judicial clerks when their previous associations could influence their objectivity.

In civil trial contexts, Rule 3.7 of the Federal Rules of Civil Procedure also indirectly supports the need for informed consent by addressing lawyer as witness issues, which parallels concerns about a judicial officer's previous professional associations influencing ongoing duties.

o 2. Tennessee Rules of Professional Responsibility:

• Rule 1.12(a): This rule echoes the ABA Model Rule, prohibiting lawyers from participating in matters where they had significant prior involvement as an adjudicative officer unless all parties consent in writing.

• Relevance: This rule's alignment with Tennessee law emphasizes the importance of avoiding potential conflicts of interest and ensuring that all parties are fully informed and consenting.

3. Code of Conduct for Judicial Employees:

• Canon 3F(1): Judicial employees must avoid conflicts of interest in their duties. A conflict arises if an employee might be personally or financially affected by a matter, leading a reasonable person to question their impartiality.

• Analysis: Mr. Kapellas' cessation of employment with Bass, Berry & amp; Sims in August 2020 does not negate the ongoing ethical considerations, particularly given his active role in issuing multiple orders against a party he previously represented. The elapsed time since his employment does little to dispel the legitimate concerns over bias.

• Canon 3F(2)(a): Restrictions dictate that judicial law clerks should avoid duties in matters where they exhibit personal bias, prior involvement as a lawyer, or financial interests.

• Implications: Although Mr. Kapellas did not directly handle the specific matter while at Bass, Berry & amp; Sims, his substantial prior relationship with the firm and its attorneys now representing a party in the current case poses severe ethical challenges. Even without direct involvement, the appearance of impropriety is a significant concern, necessitating stringent ethical scrutiny.

Case Law and Judicial Precedents

1. Duke v. Pfizer, Inc., 668 F. Supp. 1031 (E.D. Mich. 1987), aff'd, 867 F.2d 611 (6th Cir. 1989):

• Precedent: Established that a one- or two-year period of separation is often sufficient to mitigate concerns over potential conflicts of interest stemming from a judicial employee's

#### 2/3/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc

previous professional associations.

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• Implication: Despite the significant time elapsed since Mr. Kapellas' employment at Bass, Berry & amp; Sims, his subsequent actions involving issuing orders in cases against a party previously associated with the firm raise profound ethical concerns that go beyond mere procedural involvements and call into question deeper issues of judicial integrity and impartiality.

2. Xyngular Corp. v. Schenkel, 160 F. Supp. 3d 1290 (D. Utah 2016):

• Insight: Emphasizes that relationships of law clerks can cast doubts on the impartiality of judicial decisions, particularly when those relationships pertain directly to the parties involved in litigation.

• Application: Mr. Kapellas' role, combined with his previous direct involvement with a law firm representing a party, underscores a clear risk to perceived judicial fairness.

3. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988):

• Precedent: In this decision, the Supreme Court underscored the importance of maintaining public confidence in the judiciary. It held that failure to recuse in circumstances of apparent conflicts could lead to decisions being overturned based on the appearance of partiality.

• Relevance: This ruling is directly applicable to Mr. Kapellas' situation. His prior employment and direct involvement in issuing orders against a former client of his past firm could significantly undermine public trust in the judiciary's impartiality and integrity.

4. Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009):

• Precedent: The Supreme Court ruled that extreme facts could create a probability of bias sufficient to require judicial recusal.

• Application: Mr. Kapellas' continued involvement in cases where his previous employer is representing a party presents an "extreme fact" scenario similar to Caperton, suggesting a high probability of perceived bias that may necessitate his recusal to maintain the essential trust of the judiciary.

5. In re Martinez-Catala, 129 F.3d 213 (1st Cir. 1997):

• Precedent: This case highlighted that even peripheral involvement by a judicial officer in matters involving former associates or interests could necessitate recusal to preserve the appearance of justice.

• Application: Given Mr. Kapellas' past association with a law firm now involved in litigation, and his authorship of orders against a party represented by that firm, the principles set forth in Martinez-Catala strongly support the argument for his recusal to avoid any appearance of bias or impropriety.

The aforementioned cases, including Duke, Xyngular, Liljeberg, Caperton, and Martinez-Catala, provide compelling legal precedent emphasizing the necessity for recusal in situations akin to Mr. Kapellas'. The substantial prior relationship with Bass, Berry & amp; Sims PLC, his direct involvement in related litigation, and the issuance of multiple judicial orders against a party linked to his former firm collectively demand a thorough reassessment of his role. This reassessment is crucial to safeguarding the judicial process's integrity, ensuring impartiality, and maintaining public confidence in the judiciary.

#### Documents

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#### Created

21

Fri, 12/03/2021 - 11:51

Thank you for letting me know.

1) So when trees do not really fall down - it is ok to say that they did in order to consider them a causity loss?

2) When you have a drywall leak, it is ok to consider this casualty loss even though 100 ft of drywall is not replaced according to your own definition of a causity loss in the GL spreadsheet? Water remidiation is causity loss?

3) 40 million dollars of damage to an insurance company relating to a winter storm is reimbursed without any pictures or proper documentation? I thought you were self insured anyhow.

4) How are drains considered a causity loss when no causity loss has occured .

Ok, then I guess I was wrong. Thank you for letting me know.

You can consider this closed.

#### From

#### Created

Mid-America Apartment Communities, Inc. Representative Fri, 12/03/2021 - 09:53

Thank you for your submissions to MAA's anonymous and confidential whistleblower center. We received your original concerns from April 2021 as well as September 2021, the attachments provided with each original submission, as well as your additional comments and attachments submitted after the original submissions. We have conducted a review of your allegations and have concluded that no questionable accounting, internal accounting controls or auditing matters had occurred relating to our accounting for spending on casualty loss items. You have indicated that more information may be forthcoming. We will review and consider any additional information that you provide. If you do not provide any additional information before December 10, 2021, we will consider this matter and all of your other submissions closed.

#### Created

Fri, 12/03/2021 - 08:29

I am also aware of times when MAA asked vendors to put storm damage or flood damage on their invoices, Brightview, Rupert, Sitetec, etc.

#### Created

Fri, 12/03/2021 - 08:21

See below for the email I sent on 12/1 to Glenn. I also emailed Glenn, I am not sure what NEW submission was added, and I commented 11/24 and 11/30 to my original submissions. I am not sure why Glenn would be curious if I submitted; I have been pretty open and honest with my submissions.

All I can say is this; I asked for clarification while working at MAA on casualty loss on multiple occasions (I have those emails as well). I was never provided clarification. I do not believe most of these items qualified as an actual casualty loss. I know I spoke to multiple managers, and they made jokes about putting things to casualty loss. I know Dennis Duke visited the property, and we put drains to casualty loss. I know I was instructed multiple times to claim items as a casualty loss. He also stated that is how you run a property. I provided email documentations.

I am not sure what is going on or why so many items are coded to casualty loss. I am not sure why some accountants argued that it was or was not. I am not sure why flood cleanup would be a casualty loss. Post Properties or Bozzuto did not code items like that. I worked for WashREIT with Bozzuto, and they did not have these types of codes. I also gave enough information about will NOT be speaking further with MAA on this matter. I am happy to speak to anyone from the SEC. If you are not going to provide the report of your findings, I can not be sure I was right with my "allegations."

Thank you,

12/1/2021 Hello again,

I wanted to add. I know what I know, and everything I have mentioned is the truth. I know what I witnessed over the last several years. I know you have current employees that have or are still committing "accounting errors." I also started receiving texts from current employees, assuming you started questioning them.

Again, being that MAA dismissed my comments when I was asked to leave the company, I have a hard time trusting anyone at MAA. MAA has always done what is best for them, not their employees or residents.

No offense to you; I would assume you need to be very ethical in your position.

I want to review the report from April to make sure I am not being portrayed as crazy, as MAA is making me seem in their position statement to the EEOC.

Again, nothing against you; you seem like a great honest person.

Dennis

2/3/25, 3:07 PM Case 2:23-CV-02186-SHL-cgc White bioment while blow Files & Ward and a start Page 13 of 22

On Wed, Dec 1, 2021, 2:51 PM Dennis Philipson wrote: Hello Glenn,

I hope you had a nice Thanksgiving as well.

I am still waiting to hear back from my original submission from April.

Dennis

On Wed, Dec 1, 2021, 2:26 PM Russell, Glenn wrote: Good afternoon Dennis. Hope you had a good Thanksgiving.

I was curious if you submitted a NEW call into the whistleblower hotline on 11/24/21 in the evening?

Thank you Glenn

Glenn Russell, CPA, CIA SVP, Internal Audit 6815 Poplar Avenue, Suite 500 Germantown, TN 38138 P: 901-435-5412 M: 901-568-3052 www.maac.com

#### Created

Tue, 11/30/2021 - 13:52

Hello, I am checking to see if the report regarding my claim is available. Thank you.

#### Created

Wed, 11/24/2021 - 18:12

More info coming soon.

#### Created

Tue, 09/21/2021 - 14:00

The investigator and/or the Company's legal counsel, will contact, to the extent the identity of the person who files a report is known, each Company employee or contractor who files a Report to inform him or her of the results of the investigation and what, if any, corrective action was taken.

#### From

#### Created

Mid-America Apartment Communities, Inc. Representative T

Tue, 04/06/2021 - 14:07

Thank you for making this submission so that we can review your concerns.

2/3/25, 3:07 PM Case 2:23-cv-02186-SHL-cgc Www.mcw.mcw.filestellowFilestellow

Please feel free to provide any additional information you wish to share either through this platform or directly with Anwar. Anwar can be reached by email at anwar.brooks@maac.com or by phone at 901-248-4123.

## Add Comment

Message



Add Comment

Welcome back to Whistleblower.

## WHISTLEBLOWER



## Message Summary

Subject Harassment

**Type** Secure Web Form

#### **Documents**

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Fri, 09/17/2021 - 11:00

## **Original Message**

I spent 5 years working for this company and not only was harassed by residents also my direct supervisor, Mr Blackman. I had an issue with two residents harassing me and Jay dismissed the situation and told me to handle myself. Jay, constantly commented on my looks and weight where at one time I had to ask him to stop and tell them i was tired of these comments. For years, after I sent in medical documents saying I had a mental illness, he sent me "waterboy" memes, which I can only assume were commenting on my mental capacity. I

2/3/25, 3:11 PM Case 2:23-cv-02186-SHL-cgc Waterment/MiddleblowFilest-024/03/25 Page 16 of 22 have attached a couple text messages and the email, though there are several in my archives dating back to 2017. I also, do not want to send anymore documents based on advice given. Please do not contact me, you should really look into this though. Oh, also you TA manager helped me have a new hire beat a drug test...I got proof of that as well. Just thought you should know. Thanks. Have a great day!!

## Comments

Displaying 1 - 10 of 10

**Created** Sun, 12/05/2021 - 08:53

You can close this submission and not contact me further. Dennis Philipson

### Created

Wed, 11/24/2021 - 18:12

More info coming soon.

#### Created

Fri, 09/24/2021 - 08:56

OK, great - I am sure the EEOC will be able to settle this matter. Thanks again!

#### Created

Thu, 09/23/2021 - 07:47

please disregard, wrong portal.

#### Documents

 11-8-2017 Amber Cato.pdf (https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2021-09-23/11-8-2017%20Amber%20Cato\_0.pdf?
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FromCreatedMid-America Apartment Communities, Inc. RepresentativeWed, 09/22/2021 - 13:53

Thank you for reaching out. We have received your additional information. The concerns you have presented are currently being handled through the EEOC.

**Created** Mon, 09/20/2021 - 20:23 2/3/25, 3:11 PM Case 2:23-cv-02186-SHL-cgc Wheeloweilcal Old Galactic Page 17 of 22 This is my final attempt to bring this matter to MAAs attention. I have dozens more emails, texts, etc regarding Jay's childishness and harassing behavior while I was with MAA. Do

something about it!! Again, I am not the first person to bring this up or will I be the last.

#### Created

Mon, 09/20/2021 - 20:20

Not

#### Documents

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#### Created

Fri, 09/17/2021 - 14:45

Also, to Add, how MAA had Drew's back during the whole traumatic ordeal and court case with the resident, Reza.

#### Created

Fri, 09/17/2021 - 14:38

Also, to add, there were witnesses when I asked him to stop commenting on my weight, clothes etc. I continued to be mocked even after that encounter. Due to past experiences with individuals reporting Jay and my interaction with your ER department, reporting him

2/3/25, 3:11 PM Case 2:23-cv-02186-SHL-cgc Where were like a Old Age and Page 18 of 22 would have been useless. Not to mention, that your recent "investigation" did not even question any employees I had worked with in the past about harassment. All of them told me they were never even question. I heard inappropriate conversations regarding same sex with Kevin Curtis. I heard inappropriate things mentioned with Hannah Schindlewolf. I heard race related comments with Addi. It is apparent that you do not do very thorough investigations.

Also, when a financial concern was brought up, nothing was done. I have an email, from the CEO of that company, saying " Jay and I worked this out. It is apparent, that you do not do adequate investigation even after I tried to give the opportunity for this.

Thanks. Have a great weekend.

# Add Comment

Message





1

# WHISTLEBLOWER



# Message Summary

Subject Inaccurate Coding

Type Secure Web Form

#### Documents

È	3-12-21 Ice Storm Causulty.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/3-12-21%20lce%20Storm%20Causulty.pdf? language=en)	1 31 MB
Ŀ	Fake Tree Removal 12-1-20 pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/Fake%20Tree%20Removal%2012-1-20.pdf? language=en)	729.46 KB
Ŀ	email 9-30-21.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/email%209-30-21.pdf?language=en)	1015 25 KB
Ŀ	Email 11-24-20.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/Email%2011-24-20.pdf?language=en)	1.18-MB
Ŀ	Post Tysons Corner SO 7370107 pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/Post%20Tysons%20Corner%20SO%207370107 pdf? language=en)	2 39 MB
Ŀ	Post Tysons Corner SO 7370107.pdf (https://www.whiatleblowerservices.com/man/system/files- encrypted/whistleblower/documents/2021-09- 20/Post%20Tysons%20Comer%20SO%207370107_0 pdf?language=en)	2.39 MB
Ŀ	3-12-21 Ice Storm Causuity pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/3-12-21%20ice%20Storm%20Causuity_0.pdf? Tanguage=en)	1.31 MB
È	3-12-21 Ice Storn Causufty.pdf (https://www.whistleblowerservices.com/maa/system/files- encrypted/whistleblower/documents/2021-09-20/3-12-21%20Ice%20Storn%20Causulty_1.pdf? language≖en)	1 31 MB
Ŀ	Post Tysons Corner - Install Chalet Stone Boulders at Pool S0 7387824 pdf (https://www.whistleblowerservices.com/maa/system/files-encrypted/whistleblower/documents/2021 09-20/Post%20Tysons%20Corner%20- %20%20Install%20Chalet%20Stone%20%20Boulders%20at%20Pool%20S0%207387824 pdf? language=en)	- 2.12 MB
Ŀ	email 9-30-21.pdf (https://www.whisUeblowerservices.com/mna/system/files- encrypted/whistleblower/documents/2021-09-20/email%209-30-21_0 pdf?language=en)	1015.25 KB
Crea	ted	

Mon, 09/20/2021 - 13:13

# Original Message

I had brought this type of info up before - and never received an update under the original whistleblower complaint. I have also filed whistleblower complaints with other agencies as well so they can double-check. I am not sure what kind of investigating you do, but it is straightforward to pull all invoices using GL Code CLS. These items are not casualty losses; they should be regular property expenses. There was no actual storm damage or casualty loss. I was instructed by RVP, SVP, RLD, and RSD on numerous occasions that these items should be casualty loss when they were not. I have attached a few emails to show some examples. There are other examples, and this is company-wide.

# Comments

Displaying 1 - 25 of 35

Created Fri, 01/17/2025 - 13:39

Email to Paige Mills, after asking repeatedly, not to contact,

## Documents

Email to Page.pdf (https://www.whistleblowerservices.com/maa/system/files- 246.95 KB encrypted/whistleblower/documents/2025-01+17/Email%20to%20Page pdf?language=en) 246.95 KB

Created Fri, 01/17/2025 - 13:38

Email to Paige Mills

## Created

Fri, 01/17/2025 - 13:32

Here's a screenshot of me notifying MAA executives—Melanie Carpenter, Tim Argo, Bradley Hill (the new CEO)—along with attorneys Golwen and Thomas, about the unethical actions occurring in the West Tennessee Court and the Sixth Circuit Court. These actions include judicial misconduct, multiple orders issued by Michael Kappellas without disclosing his conflicts of interest, ex parte communications, and more. Despite being fully informed, the attorneys and executives at MAA continue to show no interest in addressing or reviewing the facts of the case. Their inaction demonstrates complicity in the fraudulent activities happening at MAA and within the courts, including judicial misconduct, fraudulent actions by their attorneys and employees, accounting irregularities, misuse of internal insurance companies, antitrust violations, destruction of evidence, and numerous other serious issues.

## Documents

Screenshot 2025-01-17 131808 png

(https://www.whistleblowerservices.com/maa/system/filesencrypted/whistleblower/documents/2025+01+17/Screenshot%202025+01-17%20131808.png? [anguage=en)

#### Created

Fn, 01/17/2025 - 13:26

Has anyone reached out to the Securities and Exchange Commission (SEC) or the Department of Justice (DOJ) to report my alleged "harassment" of employees or "abuse" of their required system? If none of my claims held any legitimacy, wouldn't it make sense for someone to involve them?

#### Created

Thu, 01/16/2025 - 16:33

I am continuing to document my concerns for Leslie Wolfgang, Melanie Carpenter, the new CEO, the new CEO, Glenn, the Board of Directors, and other executives at MAA.

#### Created

Thu, 01/16/2025 - 16:29

Show Cause Response

#### Documents

07-11-24 - 7-11-24 - No 24-5614 - Response to Order to Show Cause with Exhibits - Med Compression.pdf (https://www.whistleblowerservices.com/maa/system/filesenergiated/whistleblowers/degramments/2025\_01\_16/07\_11\_24#20\_%207\_11\_24#20\_%20MeX/

encrypted/whistleblower/documents/2025-01-16/07-11-24%20-%207-11-24%20-%20No%2024- 23 81 MB 5614%20-%20Response%20to%20Order%20to%20Show%20Cause%20with%20Exhibits%20-%20Med%20Compression pdf?language=en)

#### Created Thu, 01/16/2025 - 16:27

Page 1 of 27 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT 24-6082 MID-AMERICA APARTMENT COMMUNITIES, INC., Plaintiff-Appellee, v. DENNIS MICHAEL PHILIPSON, Defendant-Appellant )))) PRO SE APPELANT BRIEF ) January 16, 2025 ) ١,

	)
	)Page 2 of 27
	TABLE OF CONTENTS
	<ul> <li>Table of Authorities</li></ul>
	Introduction
	<ul> <li>1. Did the District Court Incorrectly Decide the Facts?6-9</li> </ul>
	o Altered Subpoenas and Procedural Misconduct
	o Tampered Evidence and Unreliable Testimony
	o Retaliatory Nature of the Case
	o Failure to Scrutinize False Accusations
	<ul> <li>2. Did the District Court Apply the Wrong Law?</li></ul>
	o Misapplication of Federal Whistleblower Protection Laws
	o Failure to Enforce Procedural Safeguards
	o Broader Implications of Legal Misapplication
	<ul> <li>3 Are There Additional Reasons Why the Judgment Was Wrong?11</li> </ul>
	o Use of Intimidation Tactics and Harassment
	o Procedural Failures by the District Court
	o Retaliatory Nature of the Judgment
	o Lack of Impartiality and Manipulation of Proceedings
	o The DOJ Antitrust Case & amp; Connection of Evidence Submitted14-17
	<ul> <li>4. What Specific Issues Are Raised on Appeal?</li></ul>
	o Altered Subpoenas
	o Judicial Conflicts of Interest
	o Abuse of Discovery
	o Tampered Evidence and Speculative Testimony
	o Retaliatory Litigation
	o Violations of Due Process Rights
	<ul> <li>5. What Action Should the Court of Appeals Take?</li></ul>
	o Reversal of Judgment and Dismissal with Prejudice
	o Imposition of Sanctions
	o Restitution for Harassment and Intimidation
	· Conclusion
	Certificate of Service
	TABLE OF AUTHORITIES
	Cases
	Burlington Northern & amp; Santa Fe Railway Co. v. White, 548 U.S. 53 (2006)
	21
	• Chambers v. NASCO, Inc., 501 U S. 32 (1991)
	Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
	<ul> <li>Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988)</li></ul>
	• Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984)
	Securities and Exchange Commission v. CMKM Diamonds, Inc., 729 F.3d 1248 (9th Cir.
	2013)
	• Thomas v. Tenneco Packaging Co., 293 F.3d 1306 (6th Cir. 2002)
	• Welch v. Chao, 536 F.3d 269 (4th Cir. 2008)
	Statutes
	whiteblowercenvices.com/mac/maccone/6787819language=an
100	

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE AT MEMPHIS

MID-AMERICA APARTMENT COMMUNITIES, INC.		
COMMUNICATILS, INC.	Plaintiff,	)
V.		)
DENNIS PHILIPSON,		)
	Defendant.	)
		)

Docket No. 2:23-cv-02186-SHL-cgc JURY DEMAND

## PLAINTIFF'S MOTION TO REOPEN CASE

Plaintiff Mid-America Apartment Communities, Inc. ("MAA" or "Plaintiff"), by and through counsel submits this Motion to Reopen Case to rule on its pending Motion for Contempt against Defendant Dennis Philipson ("Philipson"). To support this Motion, MAA states:

1. On March 6, 2024, MAA filed its Motion for Sanctions of Judgment and Permanent Injunction Against Philipson (the "Motion for Judgment"). (Dkt. 92). Philipson never responded.

2. On May 6, 2024, this Court granted the Motion for Judgment and entered the Injunction. (Dkt. 97).

3. In the Injunction, the Court ordered, in pertinent part that:

6. Defendant, whether under his own name or false name, and those in active concert with him, are enjoined and barred from setting up social media accounts, whether on LinkedIn or otherwise, that falsely purport to be a MAA-sanctioned account or that use the MAA trademarks in a manner that is infringing or likely to cause confusion among MAA customers and the apartment rental marketplace . . .

8. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from contacting any individual MAA Person in-person or by phone, electronic mail, text message, social media, direct message, or any other method, without the express written consent of such person.

9. Defendant, whether under his own name or a false name, and those in active concert with him, are enjoined and barred from committing any threats, stalking, cyberstalking or intimidating behavior as described in 18 U.S.C. § 2261A... [and]

11. Defendant Philipson, whether under his own name or a false name, and those in active concert with him, are hereby enjoined and prohibited from using, posting, publicizing, disseminating, or distributing statements, including but not limited to e-mails, the leaving of a review on an internet platform, or assisting another in doing same, that state or imply . . . (j) that MAA or its counsel has committed wrongful or improper conduct by attempting to serve a subpoena in [t]his lawsuit.

(Dkt. 97 at 8-10).

4. After the Court granted the Injunction, Philipson violated Paragraphs 6, 8, 9, and 11(j) by sending emails to hundreds of MAA employees, creating or maintaining certain social media accounts and submitting more than 55 duplicative and frivolous complaints to MAA's internal whistleblower platform. Because of this, MAA filed a Motion for Contempt for Violating Permanent Injunction against Philipson on July 8, 2024. (Dkt. 113).

5. On November 1, 2024, this Court entered Judgment for MAA, effectively closing this case. (Dkt. 123).

6. Neither the Motion for Contempt nor the Judgment entered against him has stopped Philipson. He continues to violate the Permanent Injunction by attempting to email MAA personnel, using MAA personnel's names and email addresses to apply for jobs and signup for subscriptions, and abusing the Whistleblower Portal with false and defamatory allegations that have already been investigated numerous times and been determined to be without merit, sometimes filing multiple submissions per day. (*See* Supplemental Declaration of Alex Tartera in Support of MAA's Motion for Contempt, Dkt. 130). In fact, he has made 96 whistleblower submissions since January 28, 2025.

#### Case 2:23-cv-02186-SHL-cgc Document 135 Filed 02/19/25 Page 3 of 5 PageID 2340

7. Philipson is also sending threatening emails to MAA's counsel. When counsel for MAA emailed Philipson a service copy of the Supplemental Declaration of Alex Tartera in Support of MAA's Motion for Contempt as required by the Rules of Civil Procedure and the Rules of this Court, he responded "Go F\*ck Yourself." He then followed up with another email stating: "Bring it on. Paige, your an unethical piece of sh\*t." True and correct copies of these emails are attached hereto collectively as **Exhibit A**.

8. As this Court is aware, Philipson has appealed its decision to the Sixth Circuit Court of Appeals. MAA filed its First Set of Post-Judgment Interrogatories and Requests for Production of Documents in Aid of Execution in the Sixth Circuit Case. MAA's counsel again emailed Philipson a service copy as required, to which he responded: "Here is my answer to all questions as well. Go f\*ck yourself." A true and correct copy of Philipson's email is attached hereto as **Exhibit B**.

9. Philipson continues to harass MAA employees, personnel, and MAA's counsel, in direct violation of this Court's Permanent Injunction and, as indicated above, he continues to ignore his discovery obligations under the Rules of Civil Procedure, which will no doubt necessitate another motion to compel.

WHEREFORE, MAA respectfully requests that this Court reopen this case to rule on MAA's Motion for Contempt for Violating Permanent Injunction against Philipson and to enable MAA to obtain responses to its post-judgment discovery.

Respectfully Submitted,

<u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills, BPR. No. 016218

# Document 135 Filed 02/19/25 Page 4 of 5 PageID 2341

BASS, BERRY & SIMS PLC 21 Platform Way South, Suite 3500 Nashville, Tennessee 37203 Tel: (615) 742-6200 pmills@bassberry.com

John Golwen, BPR. No. 014324 Jordan Thomas, BPR. No. 039531 BASS, BERRY & SIMS PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 jgolwen@bassberry.com jordan.thomas@bassberry.com

Counsel for Mid-America Apartment Communities, LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2025 the forgoing was served on the individual below by the ECF filing system and regular mail:

Dennis Philipson 6178 Castletown Way Alexandria, Virginia 22310

> <u>/s/ Paige Waldrop Mills</u> Paige Waldrop Mills

Document 135-1 Filed 02/19/25 Page 1 of 2 PageID 2343

# EXHIBIT A

#### Case 2:23-cv-02186-SHL-cgc Document 135-1 Filed 02/19/25 Page 2 of 2 PageID 2344

From:	Dee Philips
То:	McClanahan, Teresa
Cc:	Mills, Paige; Golwen, John S.; Thomas, Jordan; phillydee100@gmail.com; dphilipson1982@yahoo.com
Subject:	Re: Mid- America Apartment Communities v. D. Philipson - Declaration in Support of Motion for Contempt
Date:	Friday, January 17, 2025 10:35:31 AM
Attachments:	image001.gif

Bring it on. Paige, your an unethical piece of shit.

Do not email me.

On Fri, Jan 17, 2025 at 11:31 AM Dee Philips <a href="mikeydphilips@gmail.com">mikeydphilips@gmail.com</a>> wrote: Go Fuck Yourself

On Fri, Jan 17, 2025 at 11:29 AM McClanahan, Teresa <<u>TMcClanahan@bassberry.com</u>> wrote:

Mr. Philipson,

Please see the attached documents filed with the Courts today. Hard copies will follow via U.S. Mail.

Teresa McClanahan

Paralegal

Bass, Berry & Sims PLC

150 Third Avenue South Suite 2800 • Nashville, TN 37201

?

615-259-6787 phone • 615-742-6293 fax

tmcclanahan@bassberry.com • www.bassberry.com

Document 135-2 Filed 02/19/25 Page 1 of 2 PageID 2345

# EXHIBIT B

#### Document 135-2 Filed 02/19/25 Page 2 of 2 PageID 2346

From:	Dee Philips
То:	Williams, Kris R.
Cc:	Golwen, John S.; Mills, Paige; Thomas, Jordan
Subject:	Re: Philipson - MAA Post Judgment Discovery Requests - Set One
Date:	Monday, January 27, 2025 4:19:50 PM

Here is my answer to all questions as well. Go fuck yourself.

Thanks for the email.

Dennis

On Mon, Jan 27, 2025, 5:13 PM Williams, Kris R. <<u>Kris.Williams@bassberry.com</u>> wrote:

Good Afternoon Mr. Philipson,

Attached please find Mid-America Apartment Communities, Inc.'s First Set of Post-Judgment Interrogatories and Request for Production of Documents Propounded to Defendant Dennis Michael Philipson, as they relate to the above matter. Thank You.

-	
	2

**Kris Williams** 

Paralegal

Bass, Berry & Sims PLC
The Tower at Peabody Place - 100 Peabody Place, Suite 1300
Memphis, TN 38103-3672
901-543-1630 phone
Kris.Williams@bassberry.com • www.bassberry.com

Document 140 PageID 2379

Document 140 Filed 02/19/25 Page 1 of 1

# OOPS!

# ERRONEOUSLY ATTACHED IMAGE IS HEREBY REPLACED TO CORRECT THE RECORD.

Case 2:23-cv-02186-SHL-cgc	Document 141 PageID 2380	Filed 02/21/25	Page 1 of 3	(1 of 3)
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No. 24-6082

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED Feb 21, 2025 KELLY L. STEPHENS, Clerk

MID-AMERICA APARTMENT	)
COMMUNITIES, INC.,	)
Plaintiff - Appellee,	) )
V.	$) \qquad \underline{ORDER}$
DENNIS PHILIPSON,	)
Defendant - Appellant.	)

The defendant, proceeding pro se, appeals the district court's judgment in this civil action alleging trademark infringement and unfair competition under federal law, negligence, defamation, tortious interference, deceit, and related state law claims. The defendant has filed a "motion for reasonable accommodation and regulated interaction with plaintiff appellee's counsel." The plaintiff has not responded, and the time for doing so has passed. The defendant's omnibus motion requests a variety of accommodations, including extension of deadlines, hard copies of court orders, simplified communications, and limitation on communications from opposing counsel.

The defendant may move for an extension of time by written motion. 6 Cir. R. 26(a)(1). Although the court "disfavors applications for extensions of time for the filing of briefs," *id.*, the court may extend time for "good cause." Fed. R. App. P. 26(b). The defendant may, as appropriate, seek extensions of time to meet his various deadlines. As the defendant proceeds pro se, the clerk will continue to serve the defendant in paper. Further, as stated in the case opening letter, the clerk's office cannot give legal advice but the defendant may direct questions to his case manager at the phone number listed in the case opening letter. Otherwise, the defendant may either file in paper format or "by submitting permissible documents" to the court's pro se email box. 6 Cir. R. 25(b)(2)(a). Finally, neither the Federal Rules of Appellate Procedure nor the Sixth Circuit Rules or Internal Operating Procedures authorize the court to impose any restrictions on opposing counsel's interactions with a pro se party.

The clerk shall terminate the defendant's motion on the docket. The defendant's separate request to expedite review is DENIED AS MOOT.

ENTERED PURSUANT TO RULE 45(a) RULES OF THE SIXTH CIRCUIT

Stephens

Kelly L. Stephens, Clerk

Document 141 Filed 02/2 PageID 2382 (3 of 3)

# United States Court of Appeals for the Sixth Circuit

# U.S. Mail Notice of Docket Activity

The following transaction was filed on 02/21/2025.

**Case Name:** Mid-America Apartment Communities, Inc. v. Dennis Philipson **Case Number:** 24-6082

# **Docket Text:**

ORDER filed - The defendant may move for an extension of time by written motion. 6 Cir. R. 26(a)(1). Although the court "disfavors applications for extensions of time for the filing of briefs," id., the court may extend time for "good cause." Fed. R. App. P. 26(b). The defendant may, as appropriate, seek extensions of time to meet his various deadlines. As the defendant proceeds pro se, the clerk will continue to serve the defendant in paper. Further, as stated in the case opening letter, the clerk's office cannot give legal advice but the defendant may direct questions to his case manager at the phone number listed in the case opening letter. Otherwise, the defendant may either file in paper format or "by submitting permissible documents" to the court's pro se email box. 6 Cir. R. 25(b)(2)(a). Finally, neither the Federal Rules of Appellate Procedure nor the Sixth Circuit Rules or Internal Operating Procedures authorize the court to impose any restrictions on opposing counsel's interactions with a pro se party. The clerk shall terminate the defendant's motion on the docket. The defendant's separate request to expedite review is DENIED AS MOOT.

# The following documents(s) are associated with this transaction:

Document Description: Order

## Notice will be sent to:

Mr. Dennis Philipson 6178 Castletown Way Alexandria, VA 22310

## A copy of this notice will be issued to:

Mr. John S. Golwen Ms. Paige Waldrop Mills Ms. Wendy R. Oliver Ms. Jordan Elizabeth Thomas

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

MID-AMERICA APARTMENT COMMUNITIES, INC.,	
Plaintiff,	)
V.	)
DENNIS MICHAEL PHILIPSON,	)
Defendant.	)

No. 2:23-cv-2186-SHL-cgc

#### NOTICE OF FILING IN DISTRICT COURT TO DOCUMENT PROCEEDINGS IN BOTH JURISDICTIONS

Defendant Dennis Michael Philipson, proceeding pro se, submits this filing to the U.S. District Court for the Western District of Tennessee to ensure that all relevant documents are properly recorded in both this Court and the U.S. Court of Appeals for the Sixth Circuit, where related appellate proceedings are pending.

Given the complex nature of this case, the procedural irregularities that have occurred, and the significance of ensuring that all filings are properly preserved, Defendant submits the attached **Motion for Reconsideration and Clarification of Order No. 31** to be documented within the district court's records. By ensuring that this case is properly recorded at both the state and federal levels, Defendant seeks to maintain the integrity of the record and provide transparency in the legal process.

Additionally, maintaining proper documentation in both state and federal jurisdictions is critical, particularly in cases where inconsistencies, procedural misconduct, or misrepresentations may arise. Given the importance of accurate record-keeping, Defendant is ensuring that all filings are preserved in full view of both courts.

This submission is not a request for action but rather a formal notice to document proceedings across both jurisdictions to uphold procedural fairness and transparency.

Document 142 PageID 2384

2 Filed 02/21/25 Page 2 of 3

## Dated this 21st day of February 2025

Respectfully submitted, /s/ Dennis Michael Philipson

10

**Dennis Michael Philipson** Defendant - Appellant, Pro Se MikeyDPhilips@gmail.com 6178 Castletown Way Alexandria, VA 22310

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 21ST day of February 2025, a true and correct copy of the foregoing **Motion** for **Reconsideration and Clarification of Order No. 31** was served via PACER on the following counsel of record:

Counsel for Plaintiff:

Bass, Berry & Sims PLC Paige Waldrop Mills, BPR No. 016218 Bass, Berry & Sims PLC 21 Platform Way South, Suite 3500 Nashville, Tennessee 37203 Tel: (615) 742-6200

John Golwen, BPR No. 014324 Jordan Thomas, BPR No. 039531 Bass, Berry & Sims PLC 100 Peabody Place, Suite 1300 Memphis, Tennessee 38103 Tel: (901) 543-5903 Fax: (615) 742-6293 Counsel for Mid-America Apartment Communities, LLC

6

/s/ Dennis Michael Philipson Dennis Michael Philipson Defendant, Pro Se