IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES)	
OWNERS ASSOCIATIONS, INC.,)	
)	
Plaintiff,)	
)	Docket No. CV-2354
VS.)	
)	
HENRY BENNAFIELD, JANICE)	
BENNAFIELD, BELLA GOLDEN,)	
JAMES HAWS, DENISE HAWS,)	
VIC WARTHMAN, ELIZABETH)	
WARTHMAN, TROY VANDERHOOF,)	
PAM VANDERHOOF, ED LUND,)	
LAKE FRONT RENDEZVOUS, LLC,)	
M&G EAGLESNEST, LLC, B&M)	
STORAGE, LLC, MICHAEL SISLOW,)	
BRANDY SISLOW, JASON JORDAN,)	
836 JACKSBLUFF, LLC, FRED)	
MAESS, KRISTY WAMBOLD,)	
JAMES SCRUGGS, DEBBIE)	
HUNLEY, BRENDAN FRANTZ,)	
AIMEE FRANTZ, DAVID LANG,)	
DAVID NORCROSS, MICHELLE)	
NORCROSS, PETE SZUCH,)	
CAROLINE SZUCH, and JAMON)	
SELLMAN,)	
)	

Defendants.

MOTION TO COMPEL DISCOVERY

Come now Defendants, by and through undersigned counsel, and pursuant to Tenn. R. Civ. P. 26, 33, 34, 37, and Local Rule of Court §8.06, move the Court for an Order compelling Plaintiff to provide full and complete responses to Defendants' First Set of Interrogatories and Requests for Production of Documents to Plaintiff. In accordance with Local Rule of Court §8.06, a verbatim recitation of each Request and Response in question is contained within the body of this Motion.

Additionally, undersigned counsel certifies that counsel has in good faith conferred with Plaintiff's counsel to resolve these disputed issues. Undersigned counsel has addressed these issues

with Plaintiff's counsel multiple times via telephone and also in writing in an exhaustive effort to avoid filing this Motion. Despite these efforts, Plaintiff and Plaintiff's counsel have repeatedly refused to participate in good faith and provide the responses and requested documents in accordance with the Tennessee Rules of Civil Procedure. For these reasons, Defendants request the Court sanction Plaintiff pursuant to Tenn. R. Civ. P. 37 and require Plaintiff to pay Defendants' attorney fees and costs incurred to prosecute this Motion.

For cause, Defendants state as follows:

Background Facts

- 1. This case involves Plaintiff's rogue board of directors who have engaged in a tireless quest to prevent Defendants from doing what Defendants have been expressly permitted to do for over 20 years, that is rent their homes in Lone Mountain Shores. This board has employed a longstanding and mendacious campaign of harassment and intimidation directed at Defendants, and anyone else who dares oppose this derelict board, which culminated in the board filing this lawsuit.
- 2. Since filing this lawsuit, this board has operated under a shroud of secrecy and prevented Defendants from accessing even basic corporate documents and information, including information which repudiates this board's position on short-term rentals. The board has also coopted the corporate election process such that the board now arbitrarily disqualifies ballots cast and refuses to allow any owners to independently view and verify the results.
- 3. Now, when faced with a legal obligation to lift this veil of secrecy and provide this information, this board has chosen not to do so and instead chosen to simply disregard the law. Defendants are filing this Motion as a means to obtain the requested information which Plaintiff is legally obligated to provide.

- 4. On May 9, 2023, Defendants served their First Set of Interrogatories and Requests for Production of Documents to Plaintiff. Plaintiff thereafter failed to provide any response within the required 30-day time period.
- 5. On June 14, 2023, defense counsel emailed Plaintiff's counsel notifying Plaintiff's counsel that Plaintiff's responses were overdue and inquired as to when Plaintiff's would provide the responses. Plaintiff's counsel responded stating that the discovery requests "completely got off my radar", and Plaintiff's counsel would "take a look at them in the morning and get to work." Plaintiff's counsel said he "should be able to have the responses" to Defendants by June 29.
- 6. Defense counsel advised Plaintiff's counsel that defense counsel needed a definitive date upon which Plaintiff could provide the responses. Defense counsel told Plaintiff's counsel via email that he was willing to work with Plaintiff's counsel to avoid filing a Motion to Compel and proposed the parties enter into an Agreed Order for Plaintiff to provide its written discovery responses by a certain date. Plaintiff's counsel did not respond to defense counsel's email. (See June 14 emails attached as Exhibit 1 hereto.)
- 7. Plaintiff's counsel did not respond to defense counsel over the next seven days. Therefore, on June 21, 2023, Defendants filed a Motion to Compel requesting an Order compelling Plaintiffs to provide full and complete responses to Defendant's written discovery requests.
- 8. On June 28, 2023, Plaintiff's counsel sent defense counsel a message stating that Plaintiff would enter into an Agreed Order requiring Plaintiff's to provide discovery responses within 20 days of the Order's entry. (See June 28 messages attached as Exhibit 2 hereto.) Defense counsel agreed, and on June 30 defense counsel emailed Plaintiff's counsel a proposed Agreed Order with those terms and asked permission to sign and file the Agreed Order. (See June 30 email

attached as <u>Exhibit 3</u> hereto.) Plaintiff's counsel did not respond to defense counsel regarding permission to sign the Agreed Order.

- 9. Therefore, defense counsel again asked Plaintiff's counsel on July 9 if defense counsel had permission to file the Agreed Order memorializing their June 28 agreement. Plaintiff's counsel responded two days later, on July 11, asking defense counsel to instead "hold off on the Order" because Plaintiff was "finalizing responses to deliver by tomorrow." Plaintiffs did not provide the responses "by tomorrow" though. (See July 9 and July 11 emails attached as collective Exhibit 4 hereto.)
- 10. It was not until after the close of business on July 13 that Plaintiff's counsel emailed defense counsel Plaintiff's responses to Defendant's written discovery requests. Defense counsel thereafter reviewed Plaintiff's responses to discover they were woefully inadequate and incomplete.
- 11. For example, in response to Interrogatory No. 5, which simply asked Plaintiff to identify all individuals who have served on the LMSOA board of directors since 2013, Plaintiff refused to answer and instead provided a litany of nonsensical objections claiming this Interrogatory was:
 - "overly broad in the extreme"
 - "unduly burdensome"
 - "designed to harass and waste the time and resources of LMSOA and its volunteer officers"
 - "seeks information that is protected from disclosure by the attorney-client privilege" and
 - "seeks information that is not relevant"

- 12. Plaintiff did not provide any factual basis as to how simply identifying prior board members is "overly broad in the extreme" or "protected by the attorney-client privilege." Plaintiff instead said it "invites Defendants to review the LMSOA website for the information it seeks here."
- 13. However, notwithstanding this answer's inadequacy, Plaintiff did not provide the website domain nor did Plaintiff identify where on the website this information can supposedly be found. Moreover, the believed website to which Plaintiff refers, "Imsoa.org", requires this board's approval to access, and Plaintiff has banned multiple Defendants from having such access.
- 14. Additionally, Plaintiff refuses to provide any intra-board and third-party communications. Defendants' Interrogatory No. 20 asked Plaintiff to identify each written communication among Plaintiff's current board of directors regarding the issue of short-term rentals in Lone Mountain Shores. Plaintiff refused to identify these communications.
- 15. Instead, Plaintiff stated it is "not required" to disclose this information because the LMSOA Covenants say it's not required. Plaintiff thus ostensibly claims the LMSOA Covenants supersede Tennessee law. Therefore, Plaintiff can disregard its legal obligations and keep this information hidden from Defendants. Plaintiff's response to Interrogatory No. 20 stated, "Section 3.03 of the Covenants states, in pertinent part: 'The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members."
- 16. Plaintiff offered no legal basis for this claim. Nonetheless, Plaintiff still reiterated this position in response to Defendants' Request for Production Nos. 1, 8, 17, 18, and 20.
- 17. On July 24, 2023, defense counsel sent Plaintiff's counsel a letter detailing Plaintiff's insufficient responses and attempting to resolve this discovery dispute without necessity of judicial intervention. Defense counsel requested Plaintiff provide the complete discovery

responses and documents on or before August 7, 2023. Defense counsel also invited Plaintiff's counsel to contact defense counsel and discuss these issues. (See July 24 letter attached as Exhibit 5 hereto.) However, Plaintiff's counsel did not respond. As of this writing, Plaintiff's counsel has not responded to defense counsel's letter, nor has Plaintiff provided the requested information and documentation. Defendants thus have no choice but to file this Motion.

- 18. Defense counsel has made every effort to work with Plaintiff's counsel to resolve these discovery disputes and provided Plaintiff's counsel with ample time and opportunity to provide the requested information without necessity of further litigation. However, Plaintiff and Plaintiff's counsel have refused.
- 19. Plaintiff and Plaintiff's counsel have continually refused to participate in the discovery process in good faith. Plaintiff's counsel refused to engage in any reasonable discussions with defense counsel to resolve these issues. As a result, Defendants are now left with no other option but to file this Motion to obtain the information and documentation Plaintiff is legally obligated to provide.
- 20. Plaintiff has no reasonable legal basis for withholding the requested information and documents. Plaintiff's refusal to provide this information is done for no other purpose than to obstruct the discovery process and force Defendants to incur additional attorney fees and costs to obtain the information. For these reasons, Defendants request the Court issue sanctions against Plaintiff pursuant to Tenn. R. Civ. P. 37.05 and Local Rule of Court §8.05.

Discovery Requests and Plaintiff's Responses

Each discovery request at issue, along with Plaintiff's response, is reproduced verbatim and addressed below:

Interrogatory No. 5

 Identify by name, address, and telephone number each and every person who has served on the LMSOA board of directors in any capacity during the time period of January 1, 2013 to present.

ANSWER: LMSOA objects to this Interrogatory on the grounds that: the Response to this Interrogatory may be derived from information that is readily available to Defendants on the LMSOA website by reviewing the minutes of the current and prior Boards, it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, LMSOA invites Defendants to review the LMSOA website for the information it seeks here.

This Interrogatory is relevant to the issue of short-term rentals and also Defendants' affirmative defenses, specifically that prior members of the board of directors affirmatively permitted short-term rentals. The information requested is therefore discoverable pursuant to Tenn. R. Civ. P. 26. Plaintiff's objections to this Interrogatory are nonsensical and have no legal basis. Furthermore, it appears Plaintiff simply decided to raise these nonsensical objections in response to

each discovery request which Plaintiff did not want to answer. Plaintiff offers no factual support for any of these objections.

Interrogatory No. 9

9. Identify each and every special meeting of the LMSOA board of directors and/or LMSOA members by providing the date of each such special meeting, subject matter of each such special meeting, and any and all issues presented for member vote at each such special meeting.

ANSWER: LMSOA objects to this Interrogatory on the grounds that: the Response to this Interrogatory may be derived from information that is readily available to Defendants on the LMSOA website by reviewing the minutes of prior Special Meetings maintained there, it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, LMSOA invites Defendants to review the LMSOA website for the information it seeks here.

This Interrogatory is relevant to the issue of short-term rentals and also Defendants' affirmative defenses, specifically that prior members of the board of directors affirmatively permitted short-term rentals and whether special meetings and/or votes were held that addressed short-term rentals and issues affecting short-term rentals.

Interrogatory No. 13

13. Identify the date of every meeting of the LMSOA board of directors from January 1, 2021, to present and state the reason for each such meeting, the subject matter of any topics discussed during each such meeting, and the results of any votes held during each such meeting.

ANSWER: LMSOA objects to this Interrogatory on the grounds that: the Response to this Interrogatory may be derived from information that is readily available to Defendants on the LMSOA website by reviewing the minutes of the current Board, it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, LMSOA invites Defendants to review the LMSOA website for the information it seeks here.

This Interrogatory is relevant to the issue of short-term rentals and also Defendants' affirmative defenses, specifically that prior members of the board of directors affirmatively permitted short-term rentals and whether board meetings and/or board of directors' votes were held that addressed short-term rentals and issues affecting short-term rentals.

Interrogatory No. 20

20. Provide the date of each and every written communication (email, text message, facsimile, etc.) among the current LMSOA board of directors in which any of the current individual members of the board of directors communicated amongst or between one another regarding the issue of short-term rentals in Lone Mountain Shores and provide the method of each such communication, the parties to each such communication, and the substance of each such communication.

ANSWER: LMSOA objects to this Interrogatory on the grounds that: it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, Defendants are Members of Lone Mountain Shores and are subject to the Covenants therein. Section 3.03 of the Covenants states, in pertinent part: "The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members."

This Interrogatory is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff fails to provide any legal basis as to how "Section 3.03 of the Covenants" relieves Plaintiff of its obligation to provide Defendants with relevant information when requested pursuant to Tenn. R. Civ. P. 26.

- Produce the following records and documents of Lone Mountain Shores Owners Association, Inc. ("LMSOA"):
 - a. The charter and any restated charter as well as any and all amendments made to the charter currently in effect;
 - The by-laws and any amended or restated by-laws which are currently in effect;
 - Any and all resolutions adopted by the board of directors of LMSOA;
 - d. Any and all minutes, recordings, and/or other documents from all meetings of members, all meetings of directors, all actions approved by LMSOA members, and all actions taken by the board of directors without a meeting for the time period January 1, 2013 to present; and
 - e. Any and all written communication to LMSOA members for the time period January 1, 2018 to present, including but not limited to notices provided for each annual and special meeting, complaints, and/or any notice of hearing provided to LMSOA members.

RESPONSE: LMSOA objects to this Request on the grounds that: some of the Response to this Request may be derived from information that is readily available to Defendants, it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, the documents requested in parts 1a.,

1b., and 1d. are on the LMSOA website. Also, the current Board does not take any action without creating minutes, which are all on the LMSOA website. The current Board is not aware of any resolutions that would be responsive to Request 1c. With respect to Request 1e., Defendants are Members of Lone Mountain Shores and are subject to the Covenants therein. Section 3.03 of the Covenants states, in pertinent part: "The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members."

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff fails to provide any legal basis as to how "Section 3.03 of the Covenants" relieves Plaintiff of its obligation to provide Defendants with relevant information when requested pursuant to Tenn. R. Civ. P. 26.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

8. Produce a copy of all correspondence between and among the members of the LMSOA board of directors (past or present) for the time period January 1, 2018, to present which concern the issue of short-term rentals in Lone Mountain Shores, including but not limited to text messages, emails, facsimiles, and letters.

RESPONSE: LMSOA objects to this Request on the grounds that: it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, Defendants are Members of Lone Mountain Shores and are subject to the Covenants therein. Section 3.03 of the Covenants states, in pertinent part: "The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members." Communications between past and present Board Members are private communications protected from disclosure by the Covenants.

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff fails to provide any legal basis as to how "Section 3.03 of the Covenants" relieves Plaintiff of its obligation to provide Defendants with relevant information when requested pursuant to Tenn. R. Civ. P. 26.

9. Produce a copy of all documents which LMSOA and/or LMSOA's board of directors has received that concern complaints and/or other inquiries regarding any of the Defendants' utilizing their homes as short-term rentals.

RESPONSE: LMSOA objects to this Request on the grounds that: it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, Defendants are Members of Lone Mountain Shores and are subject to the Covenants therein. Section 3.03 of the Covenants states, in pertinent part: "The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members." Complaints made to the Board are private communications protected from disclosure by the Covenants. Additionally, there are ample complaints made by Members on the message board, which is a public forum that is available for Defendants to review at their convenience.

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff fails to provide any legal basis as to how "Section 3.03 of the Covenants" relieves Plaintiff of its obligation to provide Defendants with relevant information when requested pursuant to Tenn. R. Civ. P. 26. Plaintiff also fails to provide any legal basis as to how "Complaints made to the Board are private communications protected from disclosure by the Covenants."

14. Produce a copy of any and all correspondence between any member of the LMSOA board of directors (past or present) and the owner/occupant(s) of Lot 823 in Lone Mountain Shores for the time period January 1, 2008 to July 1, 2021 which concerns any rental activities on Lot 823.

RESPONSE: LMSOA objects to this Request on the grounds that: it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, upon information and belief, the issue with the use of Lot 823 was that the property was being used as a short-term rental, but rather a Bed and Breakfast or hotel-style commercial operation.

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff simply refuses to provide any of the requested correspondence while at the same time admitting that rental activities took place on the property in question.

19. Produce a copy of any and all correspondence by and between any member of the LMSOA board of directors (past or present) and any Defendant to this lawsuit for the time period January 1, 2013, to present, including but not limited to text messages, emails, facsimiles, ballots, and letters.

RESPONSE: LMSOA objects to this Request on the grounds that: the Response to this Request may be derived from information that is readily available to Defendants, in that it is specifically seeking information that the Defendants have already received, it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores.

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff simply refuses to provide any of the requested correspondence.

20. Produce a copy of any and all correspondence by and between any member of the LMSOA board of directors and any third-party concerning the issue of short-term rentals in Lone

Mountain Shores for the time period January 1, 2013, to present, including but not limited to text messages, emails, facsimiles, ballots, and letters.

RESPONSE: LMSOA objects to this Request on the grounds that: it is overly broad in the extreme, it is unduly burdensome, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers, it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores. Without waiving said objections, Defendants are Members of Lone Mountain Shores and are bound by the Covenants. Section 3.03 of the Covenants states, in pertinent part: "The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members."

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff fails to provide any legal basis as to how "Section 3.03 of the Covenants" relieves Plaintiff of its obligation to provide Defendants with relevant information when requested pursuant to Tenn. R. Civ. P. 26.

Produce a copy of each and every ballot cast by LMSOA members for any issue
 put to vote by LMSOA for the time period January 1, 2018 to present.

RESPONSE: LMSOA objects to this Request on the grounds that: it is overly broad in the extreme, it is unduly burdensome, it seeks information from Lone Mountain Shores Association Members that is private and confidential, it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence, it is designed to harass and waste the time and resources of LMSOA and its volunteer officers. Without waiving said objections, the current LMSOA Board also is unwilling and unable to provide actual ballots from previous elections/votes. It is completely inappropriate for individual Members' ballots to be discovered and inspected by Defendants in order to determine how individual Members voted on any issue.

This Request is relevant to the issue of short-term rentals and also Defendants' affirmative defenses. Plaintiff fails to provide any legal basis as to how it is "completely inappropriate for individual Members' ballots to be discovery and inspected by Defendant in order to determine how individual Members voted on any issue."

In fact, the Tennessee Court of Appeals has ruled that members of a nonprofit are entitled to inspect unreduced ballots cast in such elections, and voters do not have an absolute privacy right with respect to their votes. *See Rarity Bay Partners v. Rarity Bay Cmty. Ass'n*, 2021 Tenn. App. LEXIS 338 at *16 (Tenn. Ct. App. Aug. 23, 2021).

Plaintiff's response to this Request is particularly concerning in that Plaintiff recently announced the purported results of a special election to remove the current members of the LMSOA

board of directors. The results announced included a margin of 8 votes or less for 4 of the 5 current

board members.

Additionally, and even more concerning, Plaintiff disqualified 8 ballots received from

counting toward the vote totals because Plaintiff claims those ballots were from members "on an

ineligible list." Of course, Plaintiff refuses to provide Defendants with this list. Plaintiff also

refuses to disclose when and why Plaintiff deemed each of the 8 members "ineligible" after already

providing each said member with a written ballot for this special election.

For the reasons set forth herein, Defendants request the Court enter an Order compelling

Plaintiff to provide full and complete responses to Defendants' written discovery requests by a date

certain on or before August 31, 2023. Defendants further request the Court sanction Plaintiff and

require Plaintiff to pay Defendants' attorney fees and costs incurred in prosecuting this Motion

caused by Plaintiff's willful refusal to participate in the discovery process.

Respectfully submitted,

TRAMMELL, ADKINS & WARD, P.C.

By

Ryan L Sarr, Esq. BPR#032350

Attorney for Defendants

PO Box 51450

Knoxville, TN 37950

(865) 330-2577 (phone)

(865) 330-2578 (fax)

ryansarr@tawpc.com (email)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served on the following counsel of record by delivering the same or by placing the same in the United States Mail, postage prepaid:

Preston A. Hawkins Lewis Thomason, P.C. One Centre Square, Fifth Floor 620 Market Street P.O. Box 2425 Knoxville, TN 37901-2425

This 8th day of August , 2023.

TRAMMELL, ADKINS & WARD, P.C.

By Ryan L Sarr

From:

Ryan Sarr

To:

Hawkins, Preston A.

Subject:

RE: 11939-001 Maess, et al./Lone Mountain Shores: Lone Mountain Shores

Date:

Wednesday, June 14, 2023 9:43:44 PM

Attachments:

image001.png

I can't wait until June 29 to take action on the discovery responses. I will have to file a Motion to Compel this week. I'm willing to work with you to avoid that though. I could do an agreed order to provide the discovery responses by a certain date if you're willing to do that. Just let me know.

Thanks, Ryan



Ryan L. Sarr

1900 N. Winston Road, Suite 600

Knoxville, Tennessee 37919

Office: (865) 330-2577 Direct: (865) 985-0706 Cell: (931) 261-3061 Fax: (865) 330-2578

Email: ryansarr@tawpc.com

Website: https://link.edgepilot.com/s/85f36c4a/Ty3aGJP07kSCb82hIHwSaQ?

u=http://www.trammelladkinswardpc.com/

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From: Hawkins, Preston A. <PHawkins@LewisThomason.com>

Sent: Wednesday, June 14, 2023 9:33 PM **To:** Ryan Sarr <ryansarr@tawpc.com>

Subject: RE: 11939-001 Maess, et al./Lone Mountain Shores: Lone Mountain Shores

Ugh! The discovery requests completely got off my radar. I will take a look at them in the morning and get to work. I'm on vacation next week, but I would imagine that I should be able to have responses to you by the time we go to Court on June 29. I will make that my goal and I think I can do it.



Best regards,

Preston



Preston A. Hawkins Attorney at Law Lewis Thomason, P.C. 620 Market St , 5th Floor | P O Box 2425 | Knoxville, TN 37901 Tel. 865-541-5223 | Fax 865-523-6529 Web Page | My Bio

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From: Ryan Sarr < ryansarr@tawpc.com>
Sent: Wednesday, June 14, 2023 3:13 PM

To: Hawkins, Preston A. < PHawkins@LewisThomason.com>

Subject: RE: 11939-001 Maess, et al./Lone Mountain Shores: Lone Mountain Shores

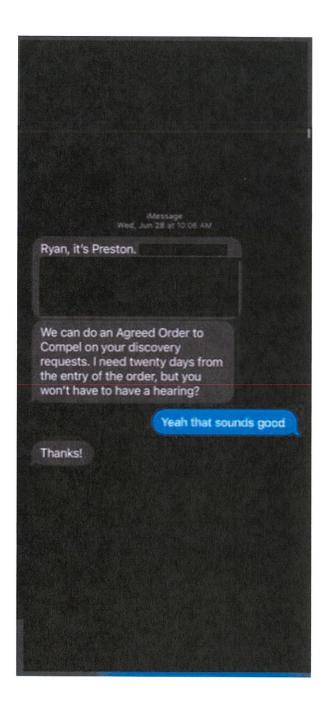
Your discovery responses are overdue. When can you get the responses to me?

Thanks, Ryan



Ryan L. Sarr 1900 N. Winston Road, Suite 600 Knoxville, Tennessee 37919

Office: (865) 330-2577 Direct: (865) 985-0706 Cell: (931) 261-3061 Fax: (865) 330-2578





From: Ryan Sarr

To: Hawkins, Preston A.

Subject: 11939-001 Maess, et al./Lone Mountain Shores: Motions

Date: Friday, June 30, 2023 2:12:29 PM

Attachments: image001.png

Order Compelling Discovery.docx

Preston,

I attached a proposed Agreed Order Compelling Discovery. Please let me know if I can sign for you.

Thanks, Ryan

?

Ryan L. Sarr

1900 N. Winston Road, Suite 600

Knoxville, Tennessee 37919

Office: (865) 330-2577 Direct: (865) 985-0706 Cell: (931) 261-3061 Fax: (865) 330-2578

Email: ryansarr@tawpc.com

Website: https://link.edgepilot.com/s/85f36c4a/Ty3aGJP07kSCb82hIHwSaO?

u=http://www.trammelladkinswardpc.com/

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From: Hawkins, Preston A.

To: Ryan Sarr

Subject: RE: 11939-001 Maess, et al./Lone Mountain Shores: Motions

Date: Tuesday, July 11, 2023 8:30:28 AM

Attachments: image001.png image002.jpg

Ryan -

I met with the Board yesterday and we are finalizing responses to deliver by tomorrow, so hold off on the Order. When I deliver the Responses, I will file a Notice with the Court that we have responded to the First Set of Interrogatories and Request for Production.

Thanks,

Preston



Preston A. Hawkins Attorney at Law

Lewis Thomason, P.C. 620 Market St. 5th Floor | P O Box 2425 | Knoxville, TN 37901 Tel: 865-541-5223 | Fax: 865-523-6529

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From: Ryan Sarr <ryansarr@tawpc.com> Sent: Sunday, July 9, 2023 4:25 PM

To: Hawkins, Preston A. <PHawkins@LewisThomason.com>

Subject: RE: 11939-001 Maess, et al./Lone Mountain Shores: Motions

Preston,

Please let me know if I can sign for you and file the attached Agreed Order Compelling Discovery. I believe you gave me permission on the phone but want to make sure.

Thanks, Ryan

EXHIBIT

4



Ryan L. Sarr

1900 N. Winston Road, Suite 600

Knoxville, Tennessee 37919

Office: (865) 330-2577 Direct: (865) 985-0706 Cell: (931) 261-3061 Fax: (865) 330-2578

Email: ryansarr@tawpc.com

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u=http://www.trammelladkinswardpc.com/

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Brian H. Trammell* (1958-2016) Terrill L. Adkins* Kenneth W. Ward* James C. "Chris" Cone* Elijah T. Settlemyre Ryan L. Sarr Laura S. Hash** Toby R. Carpenter

* Tn. Sup. Ct. R. 31 Civil Mediator

** Also admitted in Mississippi



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EXHIBIT

Email: ryansarr@tawpc.com

July 24, 2023

Preston Hawkins, Esq. Lewis Thomason, P.C. 620 Market St., 5th Floor Knoxville, TN 37901

via email: phawkins@lewisthomason.com

Re: Lone Mountain Shores Owners Association, Inc.vs. Henry Bennafield, Janice Bennafield, Bella Golden, James Haws, Denise Haws, Vic Warthman, Elizabeth Warthman, Troy Vanderhoof, Pam Vanderhoof, Ed Lund, Lake Front Rendezvous, LLC, M&G Eaglesnest, LLC, B&M Storage, LLC, Michael Sislow, Brandy Sislow, Jason Jordan, 836 Jacksbluff, LLC, Fred Maess, Kristy Wambold, James Scruggs, Debbie Hunley, Brendan Frantz, Aimee Frantz, David Lang, David Norcross, Michelle Norcross, Pete Szuch and Caroline Szuch, and Jamon Sellman Claiborne County Circuit Court, Docket No. CV-2354

Preston:

I have reviewed your client's responses to Defendants' First Set of Interrogatories and Requests for Production of Documents. There are several responses which are incomplete and do not comply with Rule 26, Rule 33, and Rule 34 of the Tennessee Rules of Civil Procedure. I have detailed the particular issues and responses below.

In your client's responses to Defendants' First Set of Interrogatories and Requests for Production of Documents. You made several inappropriate objections and refused to provide multiple categories of discoverable documents. First, you repeatedly make the following statement:

"Section 3.03 of the Covenants states, in pertinent part: 'The Board, including any committees, is not required to make available correspondence between the Board, a committee and individual Association members."

You make this statement in response to Interrogatories No. 20, 21, and 23 and Requests for Production: 1, 2, 8, 9, 17, 18, and 20. This statement regarding Section 3.03 of the Covenants is not a valid objection and/or response. Tenn R. Civ. P. 26 provides that parties may obtain discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Tenn. R. Civ. P. 26.02. No by-law or other provision of the LMSOA Covenants can relieve your client of its obligation to produce the documents requested. Therefore, your reliance upon Section 3.03 is improper.

Second, your repeated response of "LMSOA invites Defendants to review the LMSOA website for the information it seeks here." is improper. You make this and other similar improper statements in response to Interrogatories No. 5, 9, and 13 and Requests for Production No. 2, 9, 12, and 13. Your client has a duty to produce these documents whether or not your client claims the documents are available for review on a website.

Third, you fail to provide any documents in response to Request No. 14. You simply state, "upon information and belief, the issue with the use of Lot 823 was that the property was being used as a short-term rental, but rather a Bed and Breakfast or hotel-style commercial operation." This is a non-responsive answer to Request No. 14 and thus improper under the Tennessee Rules of Civil Procedure.

Fourth, your response to Request No. 21 is improper. Ballots from votes held by LMSOA are discoverable. *See Rarity Bay Partners v. Rarity Bay Cmty. Ass'n.*, 2021 Tenn. App. LEXIS 338 (Tenn. Ct. App. Aug. 23, 2021).

Please allow this letter to serve as my attempt to resolve these discovery issues without the necessity of court intervention. Please produce all documents responsive to the foregoing Interrogatories and Requests for Production within the next fourteen (14) days. If I do not hear from you and/or receive the full and complete responses on or before August 7, 2023, I will assume you do not wish to attempt any cooperation to resolve this discovery dispute. Accordingly, I will move forward with filing a Motion to Compel seeking a Court order compelling your client's responses.

Best regards,

TRAMMELL, ADKINS & WARD, P.C.

By _____Ryan L Sarr

RLS/rls

RLS/11939-001-Maess, et al./Lone Mountain Shores

Discovery Timeline

Date	Action
May 9, 2023	The Board was served with a discovery request; responses required within 30 days.
June 14, 2023	No response from the Board. The Board's attorney stated the discovery requests "completely got off my radar" and said he "should be able to have responses" by June 29.
	Our attorney proposed the two parties enter an <i>Agreed Order</i> for the Board to provide the written discovery responses by a certain date to avoid the need to file a <i>Motion to Compel</i> . The Board's attorney did not respond to the proposal. Exhibit 1.
June 21, 2023	Our attorney filed a <i>Motion to Compel</i> requesting an order compelling the Board to provide responses to the discovery requests. The hearing was set for June 29.
June 28, 2023	The Board's attorney sent a message stating the Board would enter an <i>Agreed Order</i> to provide the discovery requests within 20 days of the Order's entry. Notice the date – the day before the scheduled hearing. Our attorney agreed and the June 29 hearing was canceled. Exhibit 2.
June 30, 2023	The Agreed Order to which the Board agreed, was sent to the Board's attorney. Exhibit 3.
July 9, 2023	No response from the Board's attorney. The Board's attorney was reminded again. Exhibit 4.
July 11, 2023	The Board's attorney asked that we "hold off on the Order" because the Board was "finalizing responses to deliver by tomorrow." This did not happen. Exhibit 4.
July 13, 2023	The Board's attorney emailed the Board's responses which were woefully inadequate and incomplete. See pages 7-18 of the <i>Motion to Compel Discovery</i> .
July 24, 2023	A letter was sent to the Board's attorney detailing the insufficient responses and attempting to resolve the discovery dispute without judicial intervention. As of the filing date for the <i>Motion to Compel Discovery</i> , the Board's attorney had not responded. Exhibit 5.
August 8, 2023	Motion to Compel Discovery filed.