

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

PROPERTIES OF THE VILLAGES,
INC., a Florida corporation,

Plaintiff/Counter-Defendant,

v.

JASON KRANZ, CHRISTOPHER DAY,
ANGELA KRANZ, CYNTHIA HUGHES,
NANETTE ELLIOTT, JAN
HICKERSON, ANGIE TAYLOR, and
KELLY SHIPES,

Defendants/Counter-Plaintiffs,

and

TONI MCCHESENEY, KATHLEEN
ROTH, and KD PREMIER REALTY,
LLC,

Defendants.

CASE NO: 5:19-cv-647-JSM-PRL

**DEFENDANTS' MOTION TO OVERRULE OBJECTIONS AND COMPEL
PRODUCTION OF DOCUMENTS**

Defendants/Counter-Plaintiffs Jason Kranz, Christopher Day, Angela Kranz, Cynthia Hughes, Nanette Elliott, Angie Taylor, and Kelly Shipes and Defendant KD Realty, LLC, by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure 37 and Local Rules 3.01 and 3.04, hereby file their Motion to Overrule Objections and Compel Production of Documents and in support state:¹

¹ Defendants/Counter-Plaintiffs, Jason Kranz, Christopher Day, Angela Kranz, Cynthia Hughes, Nanette Elliott, Angie Taylor, Kelly Shipes (“Individual Defendants”) and Defendant KD Premier Realty, LLC, collectively, are referred to as “Defendants.” Plaintiff/Counter-Defendant Properties of the Villages, Inc. is referred to as “Plaintiff” or “POV”.

I. BACKGROUND

This case arises from the Individual Defendants' employment with Plaintiff. Following their resignations, Plaintiff brought a suit against for alleged violations of restrictive covenants (Counts I-III, XI-XII, XIV-XV), misappropriation of trade secrets (Counts IV and V), computer fraud and abuse (Counts VI and VII), tortious interference (Counts VIII and IX), and civil conspiracy (Count X). J. Kranz, A. Kranz, Hughes, Elliot, Taylor, Shipes, and Day countersued Plaintiff for unpaid overtime compensation pursuant to the Fair Labor Standards Act ("Counterclaim").²

On January 24, 2020, Defendants, A. Kranz, J. Kranz, Day, Taylor, Hughes, and Elliot, served their first requests for production upon Plaintiff ("Individuals' RFPs"). Each of the Individuals' RFPs contain identical requests related to the serving party. Plaintiff responded to the Individuals' RFPs on March 9, 2020, with identical responses and objections to each.³

On June 5, 2020, all defendants served Defendants' Request to Produce to Plaintiff ("Defendants' RFP"). On July 6, 2020, Plaintiff responded to Defendants' RFP. In that

² Ms. Hickerson was also a Counter-Plaintiff, but is not represented by the undersigned.

³ Defendant, Angela Kranz's Request to Produce to Plaintiff and Plaintiff's Response to Defendant Angela Kranz's Request to Product to Plaintiff are attached hereto as Composite Exhibit "A". Defendant, Angie Taylor's Request to Produce to Plaintiff and Plaintiff's Response to Defendant Angie Taylor's Request to Product to Plaintiff are attached hereto as Composite Exhibit "B". Defendant, Cynthia Hughes' Request to Produce to Plaintiff and Plaintiff's Response to Defendant Cynthia Hughes' Request to Product to Plaintiff are attached hereto as Composite Exhibit "C". Defendant, Christopher Day's Request to Produce to Plaintiff and Plaintiff's Response to Defendant Christopher Day's Request to Product to Plaintiff are attached hereto as Composite Exhibit "D". Defendant, Jason Kranz's Request to Produce to Plaintiff and Plaintiff's Response to Defendant Jason Kranz's Request to Product to Plaintiff are attached hereto as Composite Exhibit "E". Defendant, Nanette Elliot's Request to Produce to Plaintiff and Plaintiff's Response to Defendant Nanette Elliot's Request to Product to Plaintiff are attached hereto as Composite Exhibit "F".

response, Plaintiff raised several objections to the various requests. *See* Defendants’ Request to Produce to Plaintiff and Plaintiff’s Response to Defendants’ Request to Produce, attached hereto as Composite Exhibit “G”.

In an effort to resolve the objections and other outstanding discovery issues, the parties met and conferred via telephone on September 16, 2020, September 23, 2020, and September 29, 2020.⁴ The parties also exchanged several emails in an effort to narrow the issues without involving the Court. *See, e.g.,* 9/25/20 Conferral Correspondence, attached hereto as Exhibit “H”; 9/30/20 Conferral Correspondence, attached hereto as Exhibit “I”. Following those conferrals, the parties reached some agreements, but a few issues remain.

II. MEMORANDUM OF LAW

A. Standard.

“Rule 37 of the Federal Rules of Civil Procedure authorizes a motion to compel discovery when a party fails to provide proper response to requests for production of documents under Rule 34.” *Local Access, LLC v. Peerless Network, Inc.*, 2015 WL 5687867, at *2 (M.D. Fla. Sept. 25, 2015).

B. POV Should be Compelled to Produce Responsive Documents.

1. POV Agreed to Produce Responsive Documents.

During the conferral process, counsel for POV agreed to produce all non-privileged or work product protected materials in POV’s possession, custody, or control that are responsive to the Defendants’ RFP, numbers 1-3 and 9, and Individuals’ RFPs, numbers 5-6 and 9-11.

⁴ The undersigned firm appeared in this case on July 28, 2020. An order approving its substitution as counsel for Defendants was entered on August 20, 2020. Doc. 73.

Defendants have no reason to doubt production will be made, but as of this motion's filing, responsive documents have not been produced. Because discovery is set to close October 1, 2020 (*see* Doc. 22), Defendants file the instant motion seeking an order that requires Plaintiff to comply with its written promises to provide the responsive materials. In the event that Plaintiff produces the responsive materials, Defendants will promptly notify the Court that these requests are no longer at issue. Plaintiff was made aware of and did not oppose this course of action.

As required by Local Rule 3.04, each of those requests and responses are quoted below:⁵

DEFENDANTS' RFP #1: Any and all training agendas or other documentation of the training sessions attended by: a. Jason Kranz[;] b. Christopher Day[;] c. Angela Kranz[;] d. Cynthia Hughes[;] e. Nanette Elliott[;] f. Jan Hickerson[;] g. Angie Taylor[;] h. Kelly Shipes[;] i. Toni McChesney[;] j. Kathleen Roth

POV'S RESPONSE: POV will produce the initial training agendas regarding the Defendants in its possession, custody and control. Moreover, without admitting that any of the Defendants actually attended the sessions, POV will produce for inspection on an "Attorneys' Eyes Only" basis documentation of training sessions made available to one or more Defendants between January 1, 2017 through January 10, 2020, that is in its possession, custody or control. Beyond that, POV objects to Request No. 1 on the grounds that it is overly broad, vague and seeks information not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, POV objects to the Request to the extent it seeks POV's confidential or proprietary business information.

⁵ The quoted language in this section is from Exhibit G at request and response numbers 1-3 and 9, Exhibits A-F at request and response numbers 5-6 and 9-11, and Exhibits H and I.

DEFENDANTS' RFP #2: Any and all training materials furnished during any training sessions to: a. Jason Kranz[;] b. Christopher Day[;] c. Angela Kranz[;] d. Cynthia Hughes[;] e. Nanette Elliott[;] f. Jan Hickerson[;] g. Angie Taylor[;] h. Kelly Shipes[;] i. Toni McChesney[;] j. Kathleen Roth

POV'S RESPONSE: See documents produced in response to Request No. 1. Beyond that, POV objects to Request No. 2 on the grounds that it is overly broad, vague and seeks information not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, POV objects to the Request to the extent it seeks POV's confidential or proprietary business information.

POV'S CURRENT POSITION REGARDING #s 1 AND 2: "In an effort to resolve this matter, [POV is] looking for responsive information prior to 1/1/17 and plan to produce what we find, subject to any privilege. I don't know how far back we will be able to reasonably go back, but I will let you know as soon as I know. [POV is] not withholding any post-1/1/17 documents."

DEFENDANTS' RFP #3: Any and all tape or audio recordings or documents dealing with recording conversations involving: a. Jason Kranz[;] b. Christopher Day[;] c. Angela Kranz[;] d. Cynthia Hughes[;] e. Nanette Elliott[;] f. Jan Hickerson[;] g. Angie Taylor[;] h. Kelly Shipes[;] i. Toni McChesney[;] j. Kathleen Roth

POV'S RESPONSE: No such tape recordings or documents exist. Beyond that, POV objects to Request No. 3 on the grounds that it is overly broad, vague, and neither seeks information not relevant to any party's claims or defense nor is proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, POV objects to the Request to the extent it seeks POV's confidential or proprietary business information.

POV'S CURRENT POSITION REGARDING #3: "After further search, [POV] has been able to locate audio files regarding several of the Defendants, which we will produce on an "Attorneys' Eyes [Ears] Only" basis." POV subsequently advised it will designate these recordings "Confidential."

DEFENDANTS' RFP #9: Any and all records dealing with attendance or non-attendance at any meetings of any kind, coordinated, held or sponsored by Plaintiff.

POV'S RESPONSE: POV will produce attendance records in its possession, custody or control of meetings attended by sales representatives for the period January 1, 2017 through January 10, 2020. Beyond that, POV objects to Request No. 9 on the grounds that it is overly broad, vague and seeks information not relevant to any party's claims or defenses and/or not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

POV'S CURRENT POSITION REGARDING #9: At the time POV sent the conferral email attached as Exhibit I, it was still considering its position. During a subsequent conferral call on September 29, 2020, POV agreed to produce all responsive materials.

INDIVIDUALS' RFPS #5: Copies of any and all documents evidencing any confidential, proprietary information, as alleged in paragraph 66 of the Amended Complaint.

POV'S RESPONSE: Subject to the parties entering into a suitable confidentiality agreement, POV will produce non-privileged, reasonably accessible documents in its possession, custody or control (if any) that demonstrate this Defendant's unauthorized use or disclosure of POV's confidential and proprietary information. Beyond that, POV objects to Request No. 5 on the grounds that it is overly broad, vague and seeks information not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, POV objects to the Request to the extent it seeks POV's confidential or proprietary business information.

THE PARTIES' CURRENT POSITIONS REGARDING #5:

Individual Defendants agreed: “[T]o limit the request to seeking copies of the information that POV alleges Defendants used or disclosed without authorization, including those documents that you believe demonstrate such use or disclosure, if POV agrees to produce copies of all information

at issue, not just documents sufficient to demonstrate the alleged use or disclosure of the same.”

POV agreed: “[T]o the extent there are additional responsive documents, we will produce them subject to the parties’ confidentiality agreement.”

INDIVIDUALS’ RFPS #6: Copies of any and all documents indicating POV's efforts relative to keeping its confidential, proprietary, and trade secret information a secret as alleged in paragraph 67 of the Amended Complaint.

POV’S RESPONSE: POV will produce non-privileged, reasonably accessible documents in its possession, custody or control (if any) that relate to POV’s policies and practices for protection of confidential, proprietary and trade secret information demonstrate this Defendant’s unauthorized use or disclosure of POV’s confidential, proprietary and trade secret information. Beyond that, POV objects to Request No. 6 on the grounds that it is overly broad, vague and seeks information not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

POV’S CURRENT POSITION REGARDING #6: “We are looking into this and will produce any additional documents.”

INDIVIDUALS’ RFPS #9: Copies of any and all documents which indicate that this Defendant knowingly and intentionally accessed POV's computer systems without authorization and/or in excess of [her/his] authorization to obtain or destroy information, as alleged in paragraph 88 of the Amended Complaint.

POV’S RESPONSE: Subject to the parties entering into a suitable confidentiality agreement, POV will produce non-privileged, reasonably accessible documents in its possession, custody or control (if any) that demonstrate this Defendant’s unauthorized access of POV’s confidential, proprietary and trade secret information through use of POV’s computer system. Beyond that, POV objects to Request No. 9 on the grounds that it is overly broad, vague and seeks information not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, POV objects to the Request to the extent it seeks POV’s confidential or proprietary business information.

INDIVIDUALS' RFPS #10: Copies of any and all documents that indicate that this Defendant's use of any of the POV computer systems constitutes unauthorized access of POV's computer systems and computer resources.

POV'S RESPONSE: See response and objections to Request No. 9, above.

INDIVIDUALS' RFPS #11: Copies of any and all documents indicating that this Defendant obtained from POV any confidential, proprietary, or trade secret information, including to but not limited to POV's customer list, through the use of any protected computer information as alleged in paragraph 90 of the Amended Complaint.

POV'S RESPONSE: See response and objections to Request No. 9, above.

POV'S CURRENT POSITION REGARDING #s 9-11: "To the extent not already produced, [POV will] produce non-privileged documents sought in each request. I am not aware of us withholding any documents at this time."

The materials sought in each request are relevant to the claims and defenses in this case as they relate to POV's alleged legitimate business interests in training and purported confidential and proprietary information (*see* Doc. 41 at Counts I-III, XI-XII, XIV-XV), the alleged misappropriation and otherwise unauthorized accessing of such information (*id.* at Counts IV-VII), or otherwise relate to the duties and responsibilities of the Individual Defendants and their status as employees versus independent contractors (*id.* at Counts I-III, XI-XII, XIV-XV; Doc. 49 (Counterclaim) at 14-20). The requests are proportional to the needs of this case in light of the claims and defenses that are pending before this court.⁶ In light of these realities and Eleventh Circuit precedent, POV's boilerplate objections must be overruled and production of responsive materials must be compelled. *See Rivera v. 2K Cleveland, LLC*, 2017 WL 5496158, at *3-4 (S.D. Fla. 2017) ("The law in the Eleventh Circuit makes clear that

⁶ Plaintiff's confidentiality objections are moot in light of confidentiality agreement entered by the parties that governs the handling of information exchanged in this case.

boilerplate discovery objections are tantamount to no objection being raised at all and may constitute a waiver of the discovery being sought.”) (citing *Steed v. EverHome Mortgage Co.*, 308 Fed.Appx. 364, 371 (11th Cir. 2009); *Spencer v. City of Orlando, Florida*, 2016 WL 397935, at *2 (M.D. Fla. Feb. 2, 2016) (concluding that objections that are “are too vague and nonspecific” fail to “preserve any objection to the requested discovery.”); *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399, 400 (S.D. Fla. 2008) (“Parties shall not make nonspecific, boilerplate objections.”); *see also* MDFL Discovery Handbook at § III.A.6 (“Boilerplate objections such as “the request is overly broad, unduly burdensome, and outside the scope of permissible discovery” are insufficient without a full, fair explanation particular to the facts of the case.”).

2. *POV’s Objections to Defendants’ RFPs, Numbers 7 and 10, Should Be Overruled.*

DEFENDANTS’ RFP #7: Any and all documents, emails, text messages, letters, or notes to or from any of the Defendants and the Plaintiff or its representatives.

POV’S RESPONSE: POV objects to Request No. 7 on the grounds that it is overly broad, vague and seeks information not relevant to any party’s claims or defenses and/or not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In addition, POV objects to the Request to the extent it seeks POV’s confidential or proprietary business information.

THE PARTIES’ CURRENT POSITIONS REGARDING #7:

Defendants clarified: “The subject matter of ‘documents, emails, text messages, letters, or notes to or from any of the Defendants and the Plaintiff or its representatives’ can be limited to those regarding: (1) Defendants’ work for the Plaintiff, (2) Defendants’ duties, responsibilities, training/education, compensation, commissions, agreements, and restrictive covenants, (3) elections, politics, campaigns, voting, and donations, (4) information that is alleged to be confidential,

proprietary, and/or a trade secret by Plaintiff, (5) customers and clients, and (6) bonds and rebates. Please advise whether this list has provided sufficient clarity about what is requested to resolve the objections.”

POV responded: “This is still objectionable, and POV maintains its objections to this Request. That said, we are willing to further discuss a reasonable resolution.”

See Ex. G at #7; Ex. H.

As a threshold matter, POV again raised improper boilerplate objections to this request. *See Spencer*, 2016 WL 397935, at *2; MDL Discovery Handbook at § III.A.6. Those objections must be overruled, and POV should be compelled to produce materials responsive to this request as narrowed during the meet and confer process.

To the extent the Court considers the merits of objections as asserted by POV, they must be still be overruled. As explicitly discussed with POV, Defendants maintain that all materials within the Individual Defendants’ POV email accounts for the time frame relevant to the wage claims, i.e., three years prior to the date the Counterclaim was filed (since March 2017), are all discoverable as they are highly relevant not only to determining the hours worked by the Individual Defendants, but their duties and responsibilities and the information to which they were exposed. *See* Doc. 34; Doc. 49. These materials are particularly relevant in light of Plaintiff’s position that the Individual Defendants were independent contractors, not employees. *See* Doc. 50 at “[POV’s] Affirmative and Other Defenses” ¶ 3.

With respect to the information from before March 2017, Plaintiff put the materials covered by the narrowed subject matters listed by Defendants (numbers 1, 2, 4, and 5) at issue.⁷

⁷ For clarity, number (1) is “Defendants’ work for the Plaintiff,” (2) is “Defendants’ duties, responsibilities, training/education, compensation, commissions, agreements, and restrictive

Specifically, POV brought this lawsuit alleging, *inter alia*, misappropriation of trade secrets and other information from its computer systems and that its restrictive covenants with the Individual Defendants are supported by legitimate business interests. *See, e.g.*, Doc. 41 at ¶¶ 17-18, 51, 60, 69, 78-88, 90, 100, 108, 117, 122, 128, 134, 143, 161, 170. With respect to the restrictive covenants, POV claims to have a legitimate business interest in, at least: (1) allegedly confidential, proprietary, and trade secret information, which it claims the Individual Defendants were exposed to throughout their relationship, including information about clients, pricing, marketing, business practices and techniques, (2) its relationships with prospective and existing clients, and (3) its customer goodwill. *Id.* Materials covered by the narrowed subject matters listed by Defendants (numbers 3 and 6) are also at issue in the Affirmative Defenses raised by Defendants.⁸ *See* Doc. 49 at Affirmative Defenses 4(d) and 5. The materials sought are clearly identified and go to the heart of the case. POV must be compelled to produce them without further delay.

DEFENDANTS' RFP #10: Any and all documents dealing with suggested political votes or political contributions from 2008 to the present coming from or on behalf of the Plaintiff of [sic] any representative of the Plaintiff.

POV'S RESPONSE: POV has no documents in its possession, custody or control responsive to Request No. 10 since POV did not send correspondence to its sales representatives or employees suggesting political votes or political contributions. Beyond that, POV objects to Request No. 10 on the grounds that it is overly broad, vague and seeks information not relevant to any party's claims or defenses and/or not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the

covenants," (4) is "information that is alleged to be confidential, proprietary, and/or a trade secret by Plaintiff," (5) "customers and clients." *See* Ex. I.

⁸ For clarity, number (3) is "elections, politics, campaigns, voting, and donations," and (6) is "bonds and rebates." *See* Ex. I.

importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

See Ex. G at #10.

Again, POV's improper boilerplate objections to this request must be overruled. *See Spencer*, 2016 WL 397935, at *2; MDFL Discovery Handbook at § III.A.6. The materials sought here are directly at issue with respect to Affirmative Defense number 5. *See* Doc. 49 at 13 ("5. As part of the enforcement of the ICA, POV required that the Defendants make illegal and improper political contributions and donations, in violation of Federal and State law and they are estopped to enforce the ICA.>").

Further, Defendants know that responsive documents exist as they received related correspondence, on The Villages letterhead, during their tenure with POV. A few examples of this were attached to Request for Admissions served upon Plaintiff. Plaintiff's position that no such letters were sent by or on behalf of POV is an incomplete response. The definition of "Plaintiff," as used in this request, means: "Properties of the Villages, Inc., its agents, employees, accountants, counsel and any other related entity." *See* Ex. G at "Definition of Terms" ¶7.⁹ As such, the request was crafted in a way to encompass documents from Plaintiff, its representatives, and entities related to Plaintiff and their representatives. While Plaintiff may now wish to disavow the content of these letters, the fact remains that at least some

⁹ Notably the independent contractor agreements at issue explicitly discuss at least some of these related entities. *See, e.g.*, DE 1-1 at 1 ("POV acts as a broker in the sale of real estate and residential housing located in the community known as The Villages® and as developed and managed by Holding Company of The Villages, Inc., and its affiliates Properties of The Villages, Inc., The Villages Operating Company, The Villages of Lake-Sumter, Inc., and The Villages Family Company (collectively referred to herein as "VILLAGES")."). The entities collectively referred to as the "Villages" are also explicitly "third party beneficiaries" of these agreements. *Id.* at ¶ 22.

documents came from these entities or their representatives, on company letterhead. Those documents can be easily identified and must be produced.

C. Defendants are Entitled to Expenses Incurred in Connection with This Motion.

Pursuant to Federal Rule of Civil Procedure 37(a)(5)(A), “[i]f [this] motion is granted ... the court must, after giving an opportunity to be heard, require the party ... whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” Only in very limited circumstances must the court refrain from ordering the offending party, its attorneys, or both to make such a payment. Those include: (1) if the movant filed the motion before attempting to obtain the requested information or materials without court intervention, (2) if the opposing party’s failure was substantially justified, or (3) if other circumstances make such an award of expenses unjust. *Id.* None of those circumstances are present here.

First, the Parties met and conferred regarding the relief sought herein on multiple occasions. Second, POV’s refusal was not substantially justified as all of the requested information is clearly discoverable as detailed *supra*. Finally, no other circumstances render such an award unjust as POV is a large corporation with seasoned counsel and the resources necessary to comply with its discovery obligations. POV should bear the burden of its improvident and dilatory discovery practices, and POV, its counsel, or both should be forced to pay Defendants’ costs in obtaining materials they are entitled to under the Federal Rules of Civil Procedure.

III. CONCLUSION

WHEREFORE, Defendants respectfully request that this Court enter an Order overruling Plaintiff's non-privileged and work-product related objections and compelling the production of all materials responsive to Individuals' RFPs, numbers 5-6 and 9-11, and Defendants' RFPs, numbers 1-3, 7, and 9-10, awarding Defendants their expenses incurred in connection with obtaining such an order, and for all other relief this court deems appropriate.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(g)

I HERBY CERTIFY that, pursuant to Local Rule 3.01(g), the undersigned conferred via telephone with counsel for Plaintiff on September 16, 2020, September 23, 2020, and September 29, 2020, regarding the subject matter of this Motion and counsel indicated that Plaintiff opposes the Motion as detailed herein.

Dated: October 1, 2020

Respectfully submitted,

By: /s/ Christopher S. Prater

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Defendant KD Premier Realty, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2020, a true and correct copy of the foregoing has been furnished by electronic filing with the Clerk of the court via CM/ECF, which will send notice of electronic filing to all counsel of record.

By: s/ Christopher S. Prater
Christopher S. Prater