

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

CITY OF MADEIRA,	:	Case No. A-18-02415
	:	
Plaintiff,	:	Judge Luebbers
	:	
v.	:	
	:	
PHILIP DOUGLAS OPPENHEIMER,	:	DEFENDANT’S FIRST MOTION
	:	FOR IMPOSITION OF SANCTIONS
	:	PURSUANT TO R.C. 2323.51
Defendant.	:	----
	:	ORAL ARGUMENT REQUESTED
	:	

Defendant, by and through undersigned counsel, hereby moves for the imposition of sanctions pursuant to Ohio Rev. Code § 2323.51 for bringing a classic SLAPP Lawsuit, *i.e.*, a Strategic Lawsuit Against Public Participation.¹ In “[t]he filing of [this] civil action [and/or] the

¹ “R.C. 2323.51, in allowing for the imposition of sanctions against the client, counsel or both, provides a mechanism for the court to place the blame directly where the fault lies.” *Estep v. Kasparian*, 79 Ohio App.3d 313, 317, 607 N.E.2d 109 (1992). In order that the Court may appropriately and correctly impose sanctions where the blame directly lies, Mr. Oppenheimer will be seeking, by separate motion and pursuant to Ohio R. Civ. P. 21, for the joinder of the individual members of the Madeira City Council and/or other public officials with the City of Madeira who expressly authorized the bringing of this SLAPP Lawsuit.

Mr. Oppenheimer does not take lightly the bringing of this motion or the effort to join the individual members of the Madeira City Council and/or other public officials with the City of Madeira. Appreciating the gravity of seeking sanctions, Defendant’s counsel first apprized Plaintiff’s counsel of the sanctionable nature of this SLAPP Lawsuit in an effort to avoid the need to file the present motion. Additionally, Defendant’s counsel also expressly apprized Plaintiff’s counsel that the joinder of the individual members of the Madeira City Council and/or other public officials with the City of Madeira would be sought as they personally authorized the bringing of this SLAPP Lawsuit and, thus, should not be entitled to hide behind the protection of the municipal corporation and financial security of the fisc to pay any sanction imposed.

In response to the efforts to resolve this extra-judicially, and following expressions feigning interest in doing do, Plaintiff’s counsel failed to provide any substantive response. In fact, at the most recent meeting of the Madeira City Council (on January 28, 2019), Plaintiff’s counsel publically doubled down on the retaliation against Mr. Oppenheimer through this SLAPP Lawsuit.

assertion of a claim...or other position in connection with [this] civil action”, the City of Madeira has engaged in conduct repugnant to the First Amendment and, thus, sanctions are warranted as the bringing and prosecution of this particular SLAPP Lawsuit is “frivolous conduct”, *i.e.*, they “obviously serve[] merely to harass or maliciously injure another party to [this] civil action...or [are] for another improper purpose”. Ohio Rev. Code § 2323.51(A)(2)(a)(i).

The improper purpose of the City of Madeira (and the individual councilmembers and/or public officials of the City of Madeira) in bringing this SLAPP Lawsuit is clearly to retaliate against Mr. Oppenheimer for the full exercise of his fundamental First Amendment rights of freedom of speech, freedom to petition government for redress of grievances, freedom of association and freedom of the press; and, in so retaliating, causing him to incur significant expense to defend against this SLAPP Lawsuit and to stifle himself through self-censorship so as to inhibit the full and robust exercise of his First Amendment rights.² *See, e.g., Hoeber on Behalf of NLRB*

² While the use of this SLAPP Lawsuit to retaliate against a citizen who has dared to exercise his fundamental First Amendment rights alone is a sufficient “improper purpose” under Ohio Rev. Code § 2323.51(A)(2)(a)(i) to warrant the imposition of sanctions, the improper purpose and nature of this SLAPP Lawsuit becomes even more evident when consideration is also given to the spurious nature of the premises supposedly supporting the lawsuit itself, *i.e.*, that Mr. Oppenheimer “habitually, persistently, and without reasonable grounds” engaged in vexatious conduct as defined in Ohio Rev. Code § 2323.52 and the associated definitions in Ohio Rev. Code § 2323.51.

Some of the premises of the *Complaint*, *i.e.*, “the assertion of... position[s] in connection with [this] civil action”, clearly are “not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law” or consist of “factual contentions that are not warranted by the evidence”. *See* Ohio Rev. Code §§ 2323.51(A)(2)(a)(ii) & 2323.51(A)(2)(a)(iv). As such, they provide further evidence and support for the imposition of sanctions pursuant to this *Motion*, *i.e.*, that this SLAPP Lawsuit is for the “improper purpose” of retaliating against a citizen who has dared to exercise his fundamental First Amendment rights. While these additional matters are also independent bases for the *Second Motion for the Imposition of Sanctions* and the *Third Motion for the Imposition of Sanction*, they further support the imposition of sanctions pursuant to this *Motion* and, thus, the *Second Motion* and the *Third Motion* are also incorporated by reference.

v. Local 30, 939 F.2d 118, 126 (3rd Cir. 1991)(“[t]he filing of a lawsuit carries significant constitutional protections, implicating the First Amendment right to petition the government for redress of grievances, and the right of access to courts”); *see also R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427 (6th Cir. 2005)(“[t]o the extent that Goose Island alleges that government officials retaliated against it for accessing the courts, that claim arises under the First Amendment”).

The ACLU of Ohio has published a primer on SLAPP Lawsuits (<http://www.acluohio.org/wp-content/uploads/2014/05/SLAPPED-ToolForActivists.pdf>). The following excerpts provide excellent background to this the SLAPP Lawsuit which the City of Madeira has filed against one of its citizens, as well as providing context for the present *Motion*:

[A] SLAPP suit is a civil complaint or counterclaim filed against people or organizations who speak out on issues of public interest or concern.

...

SLAPPs are often brought by businesses, government bodies, or elected officials against those who oppose them on issues of public concern.... SLAPPs are filed against a variety of individuals and organizations who attempt to make their voice heard on an issue by expressing their First Amendment rights, to freedom of speech and freedom to petition the government. ...[M]ore often, individuals with fewer resources are the victims of SLAPP Suits.

SLAPPs are usually disguised as ordinary civil claims....

One of the key characteristics of a SLAPP suit is that the lawsuit is not necessarily designed to achieve a favorable verdict. Instead, it is designed to intimidate the target in order to discourage them and others from speaking out on an issue of public importance.

...

In essence, SLAPPs are designed to discourage public discussion by using our legal system to choke the exercise of free speech.

...

Most SLAPP suits involve real estate issues or zoning and land questions. However, many other SLAPP suits involve criticism of public officials or public employees,

...

One common type of SLAPP suit occurs when public sector entities or employees sue citizens for speaking out on an issue of concern.

As the ACLU's primer further points out, SLAPP Lawsuits are often provoked against individuals who participate at public hearings (47% of such SLAPP Lawsuits) or who have pursued public interest litigation (20% of such SLAPP Lawsuits). And Mr. Oppenheimer has undertaken both type of actions – participation at public hearings and public interest litigation – in opposition to and critical of public officials with the City of Madeira. Now, in return for doing so, Mr. Oppenheimer confronts this SLAPP Lawsuit.

But public officials, including the councilmembers and/or the other public officials of the City of Madeira who authorized this SLAPP Lawsuit “voluntarily placed [themselves] open to criticism of [their] actions and views on political matters....” *Mattox v City of Forest Park*, 183 F.3d 515, 522 (6th Cir. 1999). And as the Sixth Circuit has expressly recognized, “[p]ublic officials may need to have thicker skin than the ordinary citizen when it comes to attacks on their views.” *Id.* But instead of doing so, the councilmembers and/or the other public officials of the City of Madeira have elected to use the full force and resources of the government to retaliate against Mr. Oppenheimer for his exercise of his fundamental constitutional rights. Doing so is an “improper purpose” and warrants sanctions pursuant to Ohio Rev. Code § 2323.51.

The nature of this case as SLAPP Lawsuit is readily apparent from the *Complaint* and recently-tendered discovery. The *Complaint* leads off with paragraph after paragraph identifying a plethora of speech or publications of Mr. Oppenheimer but which the City of Madeira (and its councilmembers or other city officials) found objectionable, offensive or even false. See *Complaint* ¶7 (referencing “Mr. Oppenheimer’s personal website and social media activity”); *Complaint* ¶8 (decrying “the defamatory nature of [Mr. Oppenheimer’s] writings”); *Complaint* ¶9 (setting forth 13 different categories of Mr. Oppenheimer’s public and published allegations against public officials of the City of Madeira); *Complaint* ¶10 (complaining that public officials

of the City of Madeira have “been the subject of Mr. Oppenheimer’s harassment and vicious attacks”); *Complaint* ¶11 (decrying Mr. Oppenheimer “lobbying” concerning public matters in the City of Madeira); *Complaint* ¶11 (taking issue with Mr. Oppenheimer’s public characterization, *i.e.*, protected core political speech, concerning decisions by public officials). And to reinforce that this case is amount Mr. Oppenheimer’s exercise of his First Amendment rights and the personal offense taken therefrom by the councilmembers or other public officials of the City of Madeira, the only exhibits tendered in support of the *Complaint* are copies of various publications allegedly published by Mr. Oppenheimer wherein he is critical of public officials with the City of Madeira. *See Complaint, Exhibits 1-12.*

And the improper purpose of this SLAPP Lawsuit becomes further confirmed when one considers discovery requests recently propounded by the City of Madeira (copy attached). These requests generally go not to the merits of the claims in the *Complaint* but directly towards Mr. Oppenheimer’s exercise of his First Amendment rights of freedom of speech, freedom to petition government for redress of grievances, freedom of association and freedom of the press, *i.e.*, reiterating the “improper purpose” of this SLAPP Lawsuit under Ohio Rev. Code § 2323.51(A)(2)(a)(i).

Some of these requests seek to obtain information relating to a website wherein Mr. Oppenheimer reports to the community on the activities of the City of Madeira, with the requests going so far as to demand who financially supports the website:

Identify all contributors to www.MadeiraMessenger.com.

Identify all financial contributions to you for the purposes of operating or publishing on your website from any individual or entity, being sure to identify the date, the amount, and the contributor.

Interrogatory Nos. 21 & 22; see also Requests for Admissions Nos. 1 & 2 (going to who is responsible for or who curates the website www.MadeiraMessenger.com).

Further supporting the “improper purpose” of this SLAPP Lawsuit, the City of Madeira also further demands to know of all of Mr. Oppenheimer’s contacts with the news media:

Identify all media outlets with whom you have communicated about any information relating to Madeira, being sure to include the date, form, and subject matter of the communication.

Interrogatory No. 16.

And but another example of the discovery requests reiterating the “improper purpose” of this SLAPP Lawsuit being tied to Mr. Oppenheimer’s exercise of his First Amendment rights, the City of Madeira also seeks out various associations of Mr. Oppenheimer relative to the City of Madeira. *See, e.g., Interrogatory Nos. 8-10* (seeking information relating to information, consultation, advice or financial support Mr. Oppenheimer provided to third parties regarding potential lawsuits against the City of Madeira); *Interrogatory No. 15* (seeking identity of individuals to whom Mr. Oppenheimer provided encouragement to institute a lawsuit against the City of Madeira). Consider, also, the following series of document requests:

Produce copies of all communications, including, but not limited to emails and text messages, between You and [Mr. Todd Woellner, Mr. Jim Tepe, or any third party] concerning or relating to Mr. Thomas M. Powers, the B&B Mower property located at 7710 Railroad Avenue, Cincinnati, Ohio, and/or the development project for a restaurant known as the “Swingline Grill.”

*Document Requests Nos. 2 – 4.*³

³ Mr. Oppenheimer was an outspoken critics at city council meetings and otherwise of the Swingline Grill development project. This challenge to the proposed project placed them in direct opposition to the strong support of the project by councilmembers and officials with the City of Madeira. With Mr. Oppenheimer opposing and publicly criticizing these councilmembers and officials on a matter of public concern, though doing so consistent with the full and robust exercise his First Amendment rights, the result has been vindictive retaliation by the City of Madeira through the filing of this SLAPP Lawsuit, *i.e.*, an “improper purpose” under Ohio Rev. Code § 2323.51(A)(2)(a)(i) as further demonstrated by seeking documents going to such opposition and criticism.

And another document request targets directly Mr. Oppenheimer's exercise of First Amendment rights and nothing concerning this lawsuit: "Produce copies of every public records request You have submitted to Madeira." *Document Request No. 14*. As a watchdog of public government (or surely from the perspective of the councilmembers and officials with the City of Maderia, a gadfly), Mr. Oppenheimer has regularly sought public records from the City of Madeira. And the Ohio Supreme Court has expressly recognized that seeking public records is also directly tied to and related to the exercise of First Amendment rights:

A fundamental premise of American democratic theory is that government exists to serve the people. In order to ensure that government performs effectively and properly, it is essential that the public be informed and therefore able to scrutinize the government's work and decisions.... Public records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance. *Public records...promote cherished rights such as freedom of speech and press....*

Kish v. Akron, 109 Ohio St.3d 162, 846 N.E.2d 811, 2006-Ohio-1244 ¶¶15-16. Yet, through discovery requests also, the City of Madeira further confirms this SLAPP Lawsuit is, in fact, about Mr. Oppenheimer's exercise of his First Amendment right.

The true focus and "improper purpose" of this SLAPP Lawsuit is clearly to retaliate against Mr. Oppenheimer for his criticism and challenges to city councilmembers and other public officials with the City of Madeira, *i.e.*, the exercise of a his fundamental rights under the First Amendment.

CONCLUSION

The City of Madeira and its officials may consider Mr. Oppenheimer to be a gadfly (or an even less colorful appellation). But "[c]ampaigning against the government, writing op-ed pieces, urging voters to oust corrupt officials, founding an anti-corruption political party, actively participating in an anti-corruption party's activities, or speaking out repeatedly as a 'public gadfly'

are classic examples of political speech.” *Haichun Liu v. Holder*, 692 F.3d 848, 852 (7th Cir. 2012). As the *Complaint* (together with the numerous attachments thereto) and the arguments in the *Second Motion for the Imposition of Sanctions* and the *Third Motion for the Imposition of Sanctions* all demonstrate, this lawsuit is a SLAPP Lawsuit taken in retaliation against Mr. Oppenheimer for the exercise of his First Amendment rights.

Less there was any doubt as to the improper purpose behind this SLAPP Lawsuit, the recent discovery request tendered by the City of Madeira contain numerous requests for admissions, interrogatories and documents requests targeting, not the merits of this SLAPP Lawsuit (of which there is none), but instead the exercise of First Amendment rights by Mr. Oppenheimer.

As developed above, a *prima facie* showing has been made that the filing of this SLAPP Lawsuit was done for an “improper purpose” under Ohio Rev. Code § 2323.51(A)(2)(a)(i). Accordingly, the Court should order an evidentiary hearing on this matter to adjudicate and impose sanctions pursuant to Ohio Rev. Code § 2323.51.

Respectfully submitted,

/s/ Curt C. Hartman
Curt C. Hartman (0064242)
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
(513) 379-2923

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon counsel for Plaintiff, Brian Fox (bfox@graydon.law) and Steve Goodin (sgoodin@gradon.law), via e-mail on the date of filing.

/s/ Curt C. Hartman

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

CITY OF MADEIRA,	:	Case No. A1802415
	:	
Plaintiff,	:	JUDGE JODY M. LUEBBERS
	:	
vs.	:	
	:	
PHILIP DOUGLAS OPPENHEIMER,	:	PLAINTIFF'S FIRST SET OF
	:	INTERROGATORIES, REQUESTS
	:	FOR ADMISSION, AND REQUESTS
Defendant.	:	FOR PRODUCTION OF
	:	DOCUMENTS TO DEFENDANT
	:	<u>PHILIP DOUGLAS OPPENHEIMER</u>

NOW COMES Plaintiff, the City of Madeira ("Madeira"), by and through counsel, and requests that Defendant Philip Douglas Oppenheimer ("Mr. Oppenheimer"), serve answers under oath to the following Interrogatories, in accordance with Civ. R. 33; answers to each of the **Requests for Admission** in accordance with Ohio R. Civ. P. 36; and responses to each of the Requests for Production of Documents along with the requested documents, in accordance with Civ. R. 34 (collectively, "Requests") within 28 days from the time these Requests are served upon his counsel. These Requests shall continue in force until after the completion of all hearings or trial in this matter, pursuant to Civ. R. 26(E).

INSTRUCTIONS AND GENERAL PROVISIONS

1. These Requests are continuing in nature so as to require the Defendants to provide such additional information as Mr. Oppenheimer, your attorney(s), or anyone acting on behalf or in concert with them may have or may obtain between the time the answers to these Requests are served and the time of trial.

2. As used herein, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun as used and vice versa. In similar fashion, the use of the masculine form of a pronoun shall be considered also to include within its meaning the feminine form of the pronoun so used, and vice versa; also in similar fashion, the use of any tense of any verb shall be considered to include within its meaning all other

tenses of the verb so used.

3. In answering these Requests, You are requested to furnish all information which is available to You or Your attorney(s), including but not limited to, information in the possession of any attorneys, agents, investigators, representatives, or anyone acting in cooperation or concert with the case to be presented by Plaintiff.

4. If any discovery request cannot be answered in full, after exercising due diligence to secure the information to do so, please state and answer the discovery request and stating whatever information or knowledge presently is available concerning the portion of said discovery request that could not be answered.

5. Please write or type the answer to each part of an interrogatory in the space provided under that part of the interrogatory. If extra space is needed to answer any part of an interrogatory, please attach extra pages following the last page of these Requests, and please specify the number and letter, if any, of the interrogatory which is being answered at the top of one page and then write the answer underneath.

6. If you object to the whole or any part of any discovery request, for any reason, separately state the grounds for the objection.

7. If you object to the identification of any document or person, for any reason, separately state the grounds for the objection.

8. If you claim any form of privilege, whether based on a statute or otherwise, as a ground for not answering a discovery request or any portion thereof, set forth in complete detail each and every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

9. If you claim any form of privilege, whether based on a statute or otherwise, as a ground for not describing a requested oral communication, state the following with respect to each such communication: (a) The date thereof; (b) The name, present or last known home and business address and telephone numbers, title (or position) and occupation of each of the participants in the oral communication; (c) The name, present or last known home and business addresses and telephone numbers, title (or position) and occupation of each person present during all or any part of the oral communication; (d) A description of the oral communication which is sufficient to identify the particular communication without revealing the information for which a privilege is claimed; and (e) With sufficient specificity to permit the Court to make a full determination whether the claim of privilege is valid, state each and every fact or basis on which you claim any such privilege.

10. Where a discovery request calls for the description of a writing as to which you

would claim a privilege, whether based on a statute or otherwise, as a ground for non-production, you shall set forth with respect to the writing, in addition to any other information requested, its: (a) Date; (b) Author; (c) Addresses, if any; (d) Title; (e) Type of tangible thing (i.e., letter memorandum, telegram, chart, report, recording disk); (f) Subject matter (without revealing the information as to which privilege is claimed); and (g) With sufficient specificity to permit the Court to make a full determination whether the claim of privilege is valid, each and every fact or basis on which you claim such privilege.

DEFINITIONS

A. The terms “You” and “Your,” shall mean Mr. Oppenheimer for his responses, and his agents or representatives, including attorneys, insurers and all other persons acting or purporting to act on behalf of Mr. Oppenheimer.

B. “Document” as used herein shall mean all documents and electronically stored information referred to in, and/or encompassed within the scope of, Rule 34 of the Ohio Rules of Civil Procedure, including, without limitation, all electronically stored information, written communications, correspondence, memoranda, records, notes, drafts, proposals, minutes of meetings, books, papers, lists, ledgers, journals, vouchers, checks, books of original entry and other books of records, recordings, memoranda of conversations, charts, graphs, photographs, microfilms, phonograph, tape or other recordings, magnetic tapes, disks, data cells, computer data, whether or not contained in any compilation, or any other written, printed, typewritten or electronically recorded or other graphic or photographic matter or tangible thing on which any words, phrases, images or numbers are fixed or from which information can be obtained.

C. The words “identify”, “identity” or “identification”:

1. When used herein in reference to a natural person, shall require you to state:
 - (a) his/her full name and the present or last known address of his/her residence;
 - (b) his/her present or last known business affiliation and position therewith; and
 - (c) each of his/her business affiliations and positions in respect thereto.
2. When used in reference to an entity other than an individual, shall require you to state:
 - (a) its full name;
 - (b) nature of organization including the name of the state under which the same was organized; and
 - (c) each of its business affiliations and positions in respect thereto.

3. When used in reference to a document, shall require you to state:
- (a) its date;
 - (b) its author;
 - (c) the type of document (i.e., letter, memorandum, receipt, invoice, schedule, report, telegraph, chart, photograph, sound reproduction, note);
 - (d) its source (i.e., from whom You obtained it); and
 - (e) its present location and the name of the present custodian or each custodian, if there is more than one copy thereof. If any such document was, but is no longer in Your possession or subject to Your control, or it is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3) transmitted or transferred, voluntarily or involuntarily to others, identifying such others or (4) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition and state the date or approximate date thereof.

D. The word “person,” “persons,” “individual,” or “individuals” as used herein shall be deemed to include natural persons, firms, partnerships, associations, joint ventures, trustees, and corporations.

E. “Related to,” “regarding,” “relative to,” or “relating to” shall mean directly or indirectly mentioning or describing, pertaining to, connected with, or reflecting upon a matter identified in the Requests.

F. “And”, “as well as”, and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any documents which might otherwise be construed as without its scope.

G. “Madeira” refers to Plaintiff the City of Madeira, and includes its officers, officials, councilmembers, and employees.

H. “Litigation” refers to Case No. A1802415 pending in the Hamilton County Court of Common Pleas Court, Ohio.

I. “Complaint” shall mean the Complaint filed in the Litigation in May 11, 2018.

J. “Lawsuit” refers to any legal action or proceeding, including but not limited to any administrative action or proceeding.

K. Unless words or terms have been given a specific definition, each word or term used herein shall be given its usual and customary dictionary definition.

L. Unless otherwise established by the context, the plural shall be construed to include the singular and the singular the plural.

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that You are responsible for the content published on www.MadeiraMessenger.com.

ANSWER:

REQUEST NO. 2: Admit that You curate the content published on www.MadeiraMessenger.com.

ANSWER:

REQUEST NO. 3: Admit that You believe Tom Moeller has engaged in conspiracy to commit fraud.

ANSWER:

REQUEST NO. 4: Admit that You believe the Madeira City Council members have engaged in illegal collusion.

ANSWER:

REQUEST NO. 5: Admit that You believe the Hamilton County Board of Elections perpetuated a fraud initiated by Tom Moeller.

ANSWER:

REQUEST NO. 6: Admit that no trial court has made evidentiary findings substantiating your beliefs as stated in Request Nos. 3, 4, and 5.

ANSWER:

REQUEST NO. 7: Admit that no appellate court has made evidentiary findings substantiating your beliefs as stated in Request Nos. 3, 4, and 5.

ANSWER:

INTERROGATORIES

INTERROGATORY NO. 1: State the full name and current address of the person(s) responding to these Interrogatories.

ANSWER:

INTERROGATORY NO. 2: Identify all persons You know, or have reason to believe, have knowledge of any facts relevant to the issues contained in the Complaint.

ANSWER:

INTERROGATORY NO. 3: Identify all persons You intend to call as fact witnesses at trial and identify the general subjects of their testimony.

ANSWER:

INTERROGATORY NO. 4: Identify all persons You intend to call as an expert witness, being sure to include his or her address and the subject matter of his or her anticipated testimony.

ANSWER:

INTERROGATORY NO. 5: Identify each lawyer you contacted regarding a potential lawsuit against Madeira from January 1, 2010 to the present, being sure to include the date(s) of such contact.

ANSWER:

INTERROGATORY NO. 6: Identify each contact from your Answer to Interrogatory No. 5 that did not result in an attorney-client engagement.

ANSWER:

INTERROGATORY NO. 7: Identify each contact from your answer to Interrogatory No. 5 that did not result in the lawyer taking any legal action with respect to Madeira.

ANSWER:

INTERROGATORY NO. 8: Identify all lawsuits against Madeira for which you provided plaintiff(s) or his or her attorneys information, consultation, or advice but to which you were not formally named as a party.

ANSWER:

INTERROGATORY NO. 9: Identify all individuals to whom you provided information, consultation, or advice for a potential lawsuit against Madeira (without regard to

whether such lawsuit was ultimately instituted), being sure to include the subject matter of the information, consultation, or advice and the date it was provided by you.

ANSWER:

INTERROGATORY NO. 10: Identify all individuals to whom you provided any money for a potential lawsuit against Madeira (without regard to whether such lawsuit was ultimately instituted), being sure to include the amounts and the date it was provided by you.

ANSWER:

INTERROGATORY NO. 11: Identify each lawyer who declined to represent you from January 1, 2010 to the present, being sure to include the date when such declination was communicated.

ANSWER:

INTERROGATORY NO. 12: Separately state the total out-of-pocket expenses You incurred for each lawsuit and appeal identified by Madeira in the Complaint.

ANSWER:

INTERROGATORY NO. 13: To the extent you answered Request for Admission No. 6 with anything other than an unequivocal admission, identify in detail all facts supporting your answer.

ANSWER:

INTERROGATORY NO. 14: To the extent you answered Request for Admission No. 7 with anything other than an unequivocal admission, identify in detail all facts supporting your answer.

ANSWER:

INTERROGATORY NO. 15: Identify each individual whom you ever encouraged to institute a lawsuit against Madeira without regard to whether a lawsuit was ever instituted, being sure to include the date and means by which such encouragement was communicated.

ANSWER:

INTERROGATORY NO. 16: Identify all media outlets with whom you have communicated about any information relating to Madeira, being sure to include the date, form, and subject matter of the communication.

ANSWER:

INTERROGATORY NO. 17: Identify every instance you have publicly accused Tom Moeller in writing of some form of fraudulent conduct, being sure to list the date and form of publication.

ANSWER:

INTERROGATORY NO. 18: Identify all individuals holding any position in Madeira government, including but not limited to Madeira employees, councilmembers, officials, and staff, whom you have accused of fraud.

ANSWER:

INTERROGATORY NO. 19: Identify all individuals holding any position in Madeira government, including but not limited to Madeira employees, councilmembers, officials, and staff, whom you have accused of engaging in any form of illegal conduct at some point in the last twenty years, being sure to state the nature of the illegal conduct and the date of your accusation.

ANSWER:

INTERROGATORY NO. 20: Identify all individuals holding any position in Madeira government, including but not limited to Madeira employees, councilmembers, officials, and staff, whom you believe to have engaged in any form of illegal conduct at some point in the last twenty years, being sure to state the nature of the illegal conduct.

ANSWER:

INTERROGATORY NO. 21: Identify all contributors to www.MadeiraMessenger.com.

ANSWER:

INTERROGATORY NO. 22: Identify all financial contributions to you for the purposes of operating or publishing on your website from any individual or entity, being sure to identify the date, the amount, and the contributor.

ANSWER:

INTERROGATORY NO. 23: Identify all lawsuits to which you have ever been a party, being sure to include the filing date, county, and case number.

ANSWER:

INTERROGATORY NO. 24: Identify all lawsuits in which you were involved in any way (such as through the contribution of money, advice, information, or consultation) without regard to whether you were formally named as a party, being sure to include the filing date, county, case number and the nature of your involvement.

ANSWER:

INTERROGATORY NO. 25: Identify all individuals whom you have ever alleged engaged in either fraudulent conduct, illegal activity, or a cover-up, being sure to include the date of such allegation, to whom it was communicated, and the manner of communication.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all documents and materials on which you relied or referenced in answering the above Interrogatories.

RESPONSE:

REQUEST NO. 2: Produce copies of all communications, including, but not limited to emails and text messages, between You and Mr. Todd Woellner concerning or relating to Mr. Thomas M. Powers, the B&B Mower property located at 7710 Railroad Avenue, Cincinnati, Ohio, and/or the development project for a restaurant known as the "Swingline Grill."

RESPONSE:

REQUEST NO. 3: Produce copies of all communications, including, but not limited to emails and text messages, between You and Mr. Jim Tepe concerning or relating to Mr. Thomas M. Powers, the B&B Mower property located at 7710 Railroad Avenue, Cincinnati, Ohio, and/or the development project for a restaurant known as the “Swingline Grill.”

RESPONSE:

REQUEST NO. 4: Produces copies of all communications, including, but not limited to emails and text messages, between You and any third party concerning or relating to Mr. Thomas M. Powers, the B&B Mower property located at 7710 Railroad Avenue, Cincinnati, Ohio, and/or the development project for a restaurant known as the “Swingline Grill.”

RESPONSE:

REQUEST NO. 5: Produce copies of all communications, including, but not limited to emails and text messages, between You and Mr. Todd Woellner concerning or relating to alleged fraud or collusion committed by City Manager Thomas Moeller, Madeira City Council members (whether past and present), and other elected or appointed Madeira public servants.

RESPONSE:

REQUEST NO. 6: Produce copies of all communications, including, but not limited to emails and text messages, between You and Mr. Jim Tepe concerning or relating to alleged fraud or collusion committed by City Manager Thomas Moeller, Madeira City Council members (whether past and present), and other elected or appointed Madeira public servants.

RESPONSE:

REQUEST NO. 7: Produce copies of all communications, including, but not limited to emails and text messages, between You and any third party concerning or relating to alleged fraud or collusion committed by City Manager Thomas Moeller, Madeira City Council members (whether past and present), and other elected or appointed Madeira public servants.

RESPONSE:

REQUEST NO. 8: Produce copies of all communications, including, but not limited to emails and text messages, between You and Mr. Todd Woellner concerning or relating to this Litigation.

RESPONSE:

REQUEST NO. 9: Produce copies of all communications, including, but not limited to emails and text messages, between You and Mr. Jim Tepe concerning or relating to this Litigation.

RESPONSE:

REQUEST NO. 10: Produce copies of all communications, including, but not limited to emails and text messages, between You and any other third party concerning or relating to this Litigation.

RESPONSE:

REQUEST NO. 11: Produce copies of all lawsuits instituted by You.

RESPONSE:

REQUEST NO. 12: Produce copies of all engagement letters and contingent fee agreements between You and any counsel that has represented you in civil actions against Madeira.

RESPONSE:

REQUEST NO. 13: Produce copies of tax bills You have received from Madeira.

Commented [NLK1]: DJK: My thought with this one is that he has filed a number of taxpayer lawsuits, and he barely pays taxes.

RESPONSE:

REQUEST NO. 14: Produce copies of every public records request You have submitted to Madeira.

RESPONSE:

REQUEST NO. 15: Produce all drafts of any content published by You on www.MadeiraMessenger.com.

RESPONSE:

REQUEST NO. 16: Produce all archived posts, articles, or statements which appeared on website www.MadeiraMessenger.com.

RESPONSE:

REQUEST NO. 17: Produce copies of all communications, including, but not limited to emails and text messages, between You and any individual holding any position in Madeira government, including but not limited to Madeira employees, councilmembers, officials, and staff.

RESPONSE:

Respectfully submitted,

/s/ Brian W. Fox
Brian W. Fox (0086851)
Steven P. Goodin (0071713)
Attorneys for Plaintiff City of Madeira
GRAYDON HEAD & RITCHEY LLP
312 Walnut Street, Suite 1800
Cincinnati, OH 45202-3157
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Email: bfox@graydon.law

Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by email, pursuant to Civ. R. 5(B)(2)(f), and U.S. Mail pursuant to Civ. R. 5(B)(2)(c), this 14th day of January, 2019 upon the following:

Curt C. Hartman
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
Hartmanlawfirm@fuse.net

Counsel for Defendant

/s/ Brian W. Fox

Brian W. Fox (0086851)

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF _____)

The undersigned, being first duly cautioned and sworn, states that he has read the foregoing answers to Plaintiff's First Set of Interrogatories and that they are true to the best of his knowledge and belief.

(Signature)

(Printed Name)

Sworn and subscribed before me, a Notary Public, this ____ day of _____, 2019.

Notary Public
My commission expires: _____