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July 29, 2018

Defendant's First Set of Written Discovery Request to Plaintiff City of Madeira

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

CITY OF MADEIRA,	:	Case No. A1802415
	:	
Plaintiff,	:	JUDGE JODY M. LUEBBERS
	:	
vs.	:	
	:	
PHILIP DOUGLAS OPPENHEIMER,	:	DEFENDANT’S FIRST SET OF WRITTEN
	:	DISCOVERY REQUESTS TO PLAINTIFF
	:	CITY OF MADEIRA
Defendant.	:	
	:	

Pursuant to Civ.R. 26, 33, and 34, Defendant Philip Douglas Oppenheimer (“Oppenheimer” or “Defendant”) propounds the following Interrogatories and Requests for Production of Documents (collectively, “Requests”) upon Plaintiff City of Madeira (the “City” or “Plaintiff”) to be answered within twenty-eight days of service. Unless negated by the context of a specific Request, the following definitions and instructions apply to all Requests:

Definitions and Instructions

(1) The term “**documents**” is used in its broadest sense and is an all-inclusive term referring to any writing and/or recorded or graphic matter, however produced or reproduced. The term “documents” includes electronic mail, electronically stored information, facsimiles, contracts, correspondence, memoranda, reports, notes, ledgers, invoices, drafts, charts, spreadsheets, printouts, recordings, text messages, social media and/or internet postings, and all other such documents tangible or retrievable of any kind. Documents also include any preliminary notes and drafts of all the foregoing in whatever form.

(2) With respect to documents, “**identify**” means to give the date, title, author, and address. “**Identify**” with respect to documents further means:

(i) to describe a document sufficiently to enable the interrogator to know what such document is and to retrieve it from a file or wherever it may be located;

(ii) to describe it in a manner suitable for use as a description in a subpoena;

(iii) to give the name, address, position or title of the person(s) who has custody of the document and/or copies thereof.

(3) With respect to an individual, “**identify**” means:

(i) to state his/her full name;

(ii) present residence address or last known residence;

(iii) present or last known business address;

(iv) present employer or last known employer;

(v) whether ever employed by any party to this action and, if so, the dates he (she) was employed by such party, the name of such party, and the last position held as an employee of such party.

(4) “**Person**” means all natural persons and all entities, including but not limited to, any individual, firm, corporation, company, association, partnership, business, public agency, department, or any other form of public, private, or legal entity.

(5) The terms “**you**” or “**your**” mean, without limitation, Plaintiff or anyone acting on its behalf.

(6) Whenever the expression “**and/or**” is used in these Requests, the information called for should be set out in the conjunctive and disjunctive. And wherever the information is set out in the disjunctive, it should be given separately for each and every element sought.

(7) Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given unless it is not known; and then the

approximate date, amount or other computation or figure should be given or the best estimate thereof. And the answer shall state that the date, amount or other computations or figure is an estimate or approximation.

(8) The phrases “**pertaining to,**” “**pertain to,**” “**regarding,**” “**relating to,**” and “**relate to**” are used in their broadest sense and mean without limitation the following: with respect to, referring to, concerning, purporting, mentioning, notifying, identifying, distinguishing, embodying, establishing, evidencing, comprising, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, presenting, constituting, exemplifying, dealing with, or having to do with.

(9) “**Communicate**” or “**communication**” means every manner of disclosure or exchange, and every disclosure or exchange of information, whether orally, written, by electronic transmission, or other means of disseminating information.

(10) The “**2015 Case**” means the case captioned *City of Madeira ex rel. Douglas Oppenheimer v. City of Madeira*, Case No. A1506891 filed in the Hamilton County Common Pleas Court, and its subsequent appeal to the First District Court of Appeals in Case No. C160762, as set forth in Paragraphs 14 through 23 of the City’s Complaint.

(11) The “**2016 Case**” means the case captioned *The Robert McCabe Company, Inc. et al. v. City of Madeira et al.*, Case No. A1606293 filed in the Hamilton County Common Pleas Court, as set forth in Paragraphs 40 through 45 of the City’s Complaint.

(12) The “**2017 Case**” means the case captioned *City of Madeira ex rel. Douglas Oppenheimer v. City of Madeira*, Case No. A1702034 filed in the Hamilton County Common Pleas Court, as set forth in Paragraphs 24 through 39 of the City’s Complaint.

(11) No answer is to be left blank. If the answer to a Request is “none” or “unknown,” such statement must be written in the answer. If the question is inapplicable, “N/A” must be written in the answer. If an answer is omitted because of the claim of privilege, the basis of the privilege is to be stated.

(12) To the extent you claim any form of privilege, you shall set forth in complete and specific detail the exact privilege(s) being claimed, as well as every fact upon which the claimed privilege is based and such facts as will be sufficient for the Court, upon reviewing your response, to make a determination as to whether the claim of privilege is valid and applicable. If any privilege is claimed, you shall also produce a privilege log which shall include the date of each document, event, or item claimed to be privileged, a description of the document, event, or item so that it can be identified, and identify all parties who authored, created, received, sent, forwarded, obtained, reviewed, had possession of, had access to, and/or saw each and every document or item, or participated in or was present during the event included within the log. Such log shall also include the subject matter of each document, event, or item without revealing specific information as to which the privilege is asserted. In any event, the privilege log should contain sufficient specificity such that the Court will be able to make a full and complete determination as to whether the claimed privilege is valid and applicable.

(13) Unless otherwise indicated, each request should be construed independently and not by reference to any other paragraph for the purpose of limitation.

(14) These Requests are continuing, and any information and/or documents secured subsequent to the filing of your answers which would have been includable in the answers had it been known or available, is to be supplied by supplemental answers.

INTERROGATORIES

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

RESPONSE:

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.

RESPONSE:

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

RESPONSE:

INTERROGATORY NO. 4: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 7 of the Complaint that Oppenheimer has a “vendetta against Madeira and its public servants.”

RESPONSE:

INTERROGATORY NO. 5: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 23 of the Complaint that the 2015 Case “consumed two years of time and effort (December 18, 2015 - October 27, 2017) at considerable and unnecessary expense to City taxpayers.”

RESPONSE:

INTERROGATORY NO. 6: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 45 of the Complaint that the “City was involved in litigation in [the 2016 Case] for approximately eight (8) months (November 16, 2016 - June 12, 2017) at considerable and unnecessary expense to the City taxpayers.”

RESPONSE:

INTERROGATORY NO. 7: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 39 of the Complaint that the City “was forced to defend against baseless allegations of fraud and conspiracy for thirteen (13) months (April 11, 2017 - May 9, 2018) in order to protect the democratic process for Madeira voters, at considerable and unnecessary expense to City taxpayers.”

RESPONSE:

INTERROGATORY NO. 8: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 43 of the Complaint that on March 14, 2017, the City Planning Commission issued a written denial of the zoning application.

RESPONSE:

INTERROGATORY NO. 9: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 48 of the Complaint that “Mr. Oppenheimer's conduct obviously serves merely to harass or maliciously injure the City.”

RESPONSE:

INTERROGATORY NO. 10: Identify in detail all facts supporting, refuting, or relating to your allegation in Paragraph 49 of the Complaint that “Mr. Oppenheimer's continued threats against the City and public servants evidence an imminent intent to pursue additional frivolous litigation.”

RESPONSE:

INTERROGATORY NO. 11: State with particularity all facts relating to any damages or injury you allege that were sustained as a result of the allegations in your Complaint.

RESPONSE:

INTERROGATORY NO. 12: Identify any communications the City or its employees or elected officials had with Oppenheimer about (a) the 2015 Case, (b) the 2016 Case, or (3) the 2017 Case, or the facts in those cases.

RESPONSE:

INTERROGATORY NO. 13: Identify all persons you intend to call as expert witnesses at trial and identify the general subjects of their testimony.

RESPONSE:

INTERROGATORY NO. 14: Identify any communications among and between the City’s employees or its elected officials, including but not limited to members of City

Council, about (a) the 2015 Case, (b) the 2016 Case, or (c) the 2017 Case, or the facts asserted in those cases.

RESPONSE:

INTERROGATORY NO. 15: Identify any communications among and between the City’s employees or its elected officials, including but not limited to members of City Council about (a) City Ordinance No. 15-30, (b) City Ordinance No. 17-03, (c) City Ordinance 17-04, (d) City Ordinance 17-06 or (e) the January 9, 2017 written decision “effectively denying” the zoning application as referenced in Paragraph 42 of the Complaint.

RESPONSE:

INTERROGATORY NO. 16: Identify any communications among and between the City’s employees or its elected officials, including but not limited to members of City Council, and the Hamilton County Board of Elections regarding the “typographical error” alleged in Paragraph 25 of the Complaint.

RESPONSE:

INTERROGATORY NO. 17: Identify any communications among and between the City’s employees or its elected officials, including but not limited to members of City Council, regarding the City’s decision to (a) bring this action or, (2) declare Oppenheimer a vexatious litigator.

RESPONSE:

VERIFICATION

STATE OF OHIO)
) SS:
COUNTY OF _____)

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

(Signature)

(Printed Name)

Sworn and subscribed before me, a Notary Public, this ____ day of _____, 2018.

Notary Public

My commission expires: _____

REQUESTS FOR PRODUCTION OF DOCUMENTS

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

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Produce all documents and materials relating to the allegations in the Complaint.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Produce all documents and materials relating to any damages or harm allegedly suffered by Plaintiff as a result of the allegations in the Complaint.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Produce all documents and materials relating to any communications with Oppenheimer relating to the facts or allegations asserted in (a) 2015 Case, (b) the 2016 Case, or (c) the 2017 Case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce all documents and materials relating to any internal communications, including emails and text messages, among the City's employees or City Council relating to (a) 2015 Case, (b) the 2016 Case, or (c) the 2017 Case, or the facts asserted in those cases.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Produce all documents or other evidence supporting your allegation in Paragraph 23 of the Complaint that that the 2015 Case “consumed two years of time and effort (December 18, 2015 - October 27, 2017) at considerable and unnecessary expense to City taxpayers.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: Produce all documents and materials relating to your allegation in Paragraph 45 of the Complaint that the “City was involved in litigation in [the 2016 Case] for approximately eight (8) months (November 16, 2016 - June 12, 2017) at considerable and unnecessary expense to the City taxpayers.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: Produce all documents and materials relating to your allegation in Paragraph 39 of the Complaint that the City “was forced to defend against baseless allegations of fraud and conspiracy for thirteen (13) months (April 11, 2017 - May 9, 2018) in order to protect the democratic process for Madeira voters, at considerable and unnecessary expense to City taxpayers.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Produce all documents and materials relating to any internal communications, including emails and text messages, among the City’s

employees or City Council relating to the decision to bring this lawsuit and/or to declare Oppenheimer a vexatious litigator.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Produce all documents and materials relating to any internal communications, including emails and text messages, among the City's employees or City Council regarding (a) City Ordinance No. 15-30, (b) City Ordinance No. 17-03, (c) City Ordinance 17-04, (d) City Ordinance 17-06.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: Produce all documents and materials you have provided to any expert witness.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Produce all documents and materials relating to (a) City Ordinance No. 15-30, (b) City Ordinance No. 17-03, (c) City Ordinance 17-04, (d) City Ordinance 17-06, including all drafts of same.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Produce all documents and materials relating to your allegation in Paragraph 43 of the Complaint that on March 14, 2017, the City Planning Commission issued a written denial of the zoning application.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Produce all documents and materials relating to your allegation in Paragraph 48 of the Complaint that “Mr. Oppenheimer's conduct obviously serves merely to harass or maliciously injure the City.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Produce all documents and materials relating to your allegation in Paragraph 49 of the Complaint that “Mr. Oppenheimer's continued threats against the City and public servants evidence an imminent intent to pursue additional frivolous litigation.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Identify any communications among and between the City’s employees or its elected officials, including but not limited to members of City Council, and the Hamilton County Board of Elections regarding the “typographical error” alleged in Paragraph 25 of the Complaint.

RESPONSE:

Respectfully submitted,

/s/ Bryce A. Lenox
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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following by email, this ___ day of July, 2018:

Brian W. Fox
Steve P. Goodin
GRAYDON, HEAD & RITCHIE LLP
312 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3157

/s/ Bryce A. Lenox
Bryce A. Lenox (0069936)